

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(i) Definitions/301. Meaning of 'ecclesiastical law'.

ECCLESIASTICAL LAW (

Consolidation

The Pastoral Measure 1968, the Pastoral (Amendment) Measure 1982 and related enactments have been consolidated with minor amendments in the Pastoral Measure 1983. For destination of consolidated provisions see table, PARA 1435A.

Local government: transfer of functions

The Greater London Council and the metropolitan county councils have been abolished by the Local Government Act 1985. Their functions are transferred to local authorities in the corresponding areas and, in some cases, to other bodies. The provisions of the 1985 Act are dealt with in the relevant paragraphs of LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq and LONDON GOVERNMENT, rather than in individual titles.

1. INTRODUCTION

(1) CHURCH AND LAW

(i) Definitions

301. Meaning of 'ecclesiastical law'.

The term 'ecclesiastical law' may be used both in a general and in a technical sense. In its general sense it means the law relating to any matter concerning the Church of England administered and enforced in any court; in its technical sense it means the law administered by ecclesiastical courts and persons¹. This distinction is important, as different sanctions apply². Thus an order of certiorari does not lie to bring up to be quashed an order of a consistory court, but where it is alleged that an ecclesiastical court has exceeded its jurisdiction the prerogative remedy of prohibition is available³.

This title deals with the law relating to churches, members of churches, spiritual persons and ecclesiastical officers, to divine services, and to benefices and the property⁴ of churches, whether that law is within the sole cognisance of the ecclesiastical courts or is enforced by the temporal courts of law; the title also extends to ecclesiastical courts and their proceedings⁵.

¹ Denning, *The Meaning of 'Ecclesiastical Law'* 60 LQR 235 at 236. It is the law declared by the ecclesiastical courts on matters 'the consueance where of belongs not to the common laws of England': *Caudrey's Case* (1591) 5 Co Rep 1a at 9a. Cf. Hooker, *Ecclesiastical Polity*, Book 1, s 16.

² *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239 at 244, 245, [1945] 1 All ER 479 at 483, per Uthwatt J. The end of the temporal law is to punish the outward man; that of the ecclesiastical law, being spiritual, is to reform the inward man: *Caudrey's Case* (1591) 5 Co Rep 1a at 6.

³ *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex parte White* [1948] 1 KB 195, [1947] 2 All ER 170, CA. As to orders of mandamus to ecclesiastical courts, see PARA 1269 post.

4 As to the law of charities, including that concerning religious purposes as charitable purposes, see CHARITIES, and as to religious charities in particular, see CHARITIES vol 8 (2010) PARA 28 et seq. For a statutory definition of 'ecclesiastical charity' for the purpose of a transfer of property, see PARA 1051 note 1 post.

5 This statement of the scope of the title must be considered against the background of the general scheme of the work; eg for the general law concerning such subjects as burial, marriage, taxation of income, rating or personal or real property, see CREMATION AND BURIAL; INCOME TAXATION; MATRIMONIAL AND CIVIL PARTNERSHIP LAW; PERSONAL PROPERTY; RATING AND COUNCIL TAX; REAL PROPERTY.

UPDATE

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NOTE 3--*R v Chancellor of St Edmundsbury and Ipswich Diocese, ex p White*, cited, applied in *R v Exeter Consistory Court, ex p Cornish* [1998] ELJ 212.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(i) Definitions/302. Meaning of 'church'.

302. Meaning of 'church'.

In ecclesiastical law 'church'¹, when used in relation to a religious body², has two distinct meanings: it may mean either the aggregate of the individual members of the church or it may mean the quasi-corporate institution which carries on the religious work of the denomination³ whose name it bears⁴.

The term 'Church of England' has sometimes been loosely used to refer to the Anglican Communion⁵ and to include churches which, though not part of the Church of England, are in communion with it and accept the same standards of faith and doctrine⁶. This is, however, incorrect⁷, and in Church Assembly or General Synod Measures⁸ 'Church of England' does not include the Church in Wales⁹.

1 In legal parlance 'church' is no longer confined to Christian churches; it is used eg in reference to an association for the purposes of the Mahomedan religion: *Ibrahim Esmael v Abdool Carrim Peermamode* [1908] AC 526 at 535, PC. For the original meaning of the term and the diversity of meanings which it acquired, see Oxford English Dictionary, 'Church'.

2 In the Interpretation Measure 1925 and in every Measure passed thereafter, unless the contrary intention appears, 'church' is confined to buildings, and means any church or chapel which has been consecrated for the purpose of religious worship according to the rites and ceremonies of the Church of England: s 3.

3 Although 'church' and 'denomination' are sometimes used in juxtaposition from which it might appear that they are distinguishable, there is no legal definition of 'denomination' to support this. 'Denomination' is only 'sect' writ large: *MacLaughlin v Campbell* [1906] 1 IR 588 at 598, CA. Under the National Service Act 1948, Sch. 1, PARA.2, exemption from compulsory service is given to 'a regular minister of any religious denomination'. The following have been held to be religious denominations: the Strict Baptist Church (*Offord v Hiscock* (1917) 86 LJB 941; cf. *Nock v Malins* (1917) 87 LJB 62); Church of Jesus Christ of Latter Day Saints (*Hawkes v Moxey* (1917) 86 LJB 1530, DC); Jehovah's Witnesses (*Walsh v Lord Advocate* [1956] 3 All ER 129, [1956] 1 WLR 1002, HL). The following have been held not to be religious denominations: Seamen and Boatmen's Friends Society (*Bratt v Auty* (1917) 86 LJB 305); Evangelisation Society (*Flint v Courthope* (1918) 87 LJB 504, DC); Undenominational Church (*Kick v Donne* (1917) 81 JP 191, DC). See also *Oaten v Auty* [1919] 2 KB 378, DC; and see *R v Registrar General, ex parte Segerdal* [1970] 2 QB 697, [1970] 3 All ER 886, CA, where it was held that a building in which took place the ceremonies of the Church of Scientology was not a place of meeting for religious worship.

4 This passage was adopted in *Re Barnes, Simpson v Barnes* (1922) [1930] 2 Ch 80n, and *Re Schoales, Schoales v Schoales* [1930] 2 Ch 75. If used in conjunction with the name of the denomination (eg the Church of Rome or Church of Ireland) 'church' prima facie imports the operative institution which ministers religion and gives spiritual edification to its members: *MacLaughlin v Campbell* [1906] 1 IR 588 at 597, CA, followed in *Re Barnes, Simpson v Barnes* (1922) [1930] 2 Ch 80n, and *Re Schoales, Schoales v Schoales* [1930] 2 Ch 75.

5 For the meaning of 'Anglican Communion', see PARA 313 post.

6 Cf. *Re Clergy Orphan Corpn Trusts, Clergy Orphan Corpn v Christopher* [1933] 1 Ch 267; and see PARA 313 et seq post.

7 *Re Colonial Bishopricks Fund* 1841 [1935] Ch 148, where it was held that the Archbishop of Cape Town was not a bishop of the Church of England as by law established.

8 The Church Assembly, which was established under the Church of England Assembly (Powers) Act 1919, was in 1970 renamed and reconstituted as the General Synod of the Church of England: Synodical Government Measure 1969, s 2. As to the General Synod and its legislative powers, see PARA 384 et seq post.

9 Interpretation Measure 1925, s 2 proviso (b). The Revised Canons Ecclesiastical declare that the Church of England established according to the laws of the realm under the Queen's Majesty belongs to the true and apostolic Church of Christ; and, as our duty to the said Church of England requires, we do constitute and ordain that no member of it shall be at liberty to maintain or hold the contrary: Canon A1. See also PARA 345 post.

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(ii) Ecclesiastical Law as Part of the Law of England

303. Common law and statute law.

The laws of England may be divided into two kinds, the unwritten (or common) law, and the written (or statute) law¹. The ecclesiastical law which forms part of the law of England is not a foreign law², and naturally falls into the same divisions. It consists of statute law and common law. The statute law consists of Acts of Parliament that affect the church and of Measures passed by the Church Assembly or the General Synod³ that have received the assent of Parliament and the royal assent in accordance with the provisions of the Church of England Assembly (Powers) Act 1919⁴.

The common law of the realm (which is none other than the common custom of the realm⁵) must not be confused with the common law (*jus commune*) of the Church of Rome. When used by canonists 'common law' means the law common to the Church of Rome generally and universally, as opposed to the special customs and privileges of any provincial church⁶.

1 1 Bl Com (14th End) 63; Hale CL 23.

2 *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 446, HL.

3 See PARA 302 note 8 ante.

4 References in the Church of England Assembly (Powers) Act 1919, ss 3, 4, and in other Measures, enactments and instruments to the Church Assembly are now construed as references, or as including references, to the General Synod: Synodical Government Measure 1969, s 2 (2). See further PARA 384 et seq post. Subordinate legislation made under statutory authority is also part of the statute law. As to interpretation, see PARA 401 post.

5 Sir J. Davy's Reports, Preface. A post-Reformation usage (like that of the black gown for preaching which has ranged over 300 years may be lawful, although no positive law on the subject exists, if no objection to its legality can be found and there is no decision that it is illegal. A warrant for the use of the black gown is found in its constant user for several centuries: see *Re Robinson, Wright v Tugwell* [1897] 1 Ch 85, CA. Great importance was attached to post-Reformation custom in the Privy Council decisions that the chasuble, alb etc. are illegal. It was said that there had been non-user of these vestments for over 300 years (ie since the Reformation): see *Hebbert v Purchas* (1872) LR 4 CP 301; and see *Ridsdale v Clifton* (1877) 2 PD 276 at 331, PC, citing *Westerton v Liddell, Horne etc* (1855) Moore's Special Report: usage, for a long series of years, in ecclesiastical customs especially, is entitled to the greatest respect; it has every presumption in its favour; but it cannot contravene or prevail against positive law, though, where doubt exists, it might turn the balance. It is thought that it was in accordance with this presumption that the power of a deacon to solemnise matrimony (now undoubtedly legal) exists (see PARA 664 post). The old canon law rule as to the formalities necessary to constitute a marriage was dropped, or rather was 'utterly abolished' and 'became frustrate and of non-effect'; a new one took its place at the Reformation and has been acted upon ever since: see *R v Millis* (1844) 10 Cl & Fin 534, HL, especially the difficulty expressed at 746 et seq. by Lord Campbell. See also 37 Hen 8 c. 17 (Ecclesiastical Jurisdiction) (1545) (repealed).

6 *Rennell v Bishop of Lincoln* (1825) 3 Bing 223 at 271, per Best CJ: 'Lyndwood means the ecclesiastical law or common law of Christendom by *jus commune*'. See also Maitland, Roman Canon Law in the Church of England 4: and *Evers and Owen's Case* (1627) Godb 431 at 432. '*Jus commune*' thus includes what common lawyers call statute law. As to Lyndwood, see PARA 304 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(ii) Ecclesiastical Law as Part of the Law of England/304. The origin of ecclesiastical law.

304. The origin of ecclesiastical law.

Ecclesiastical law in England derives its immediate origin largely from the canon law of papal Rome and the civil law of imperial Rome. Whatever in these codes is essential to the laws of England has long since been incorporated into either the statute or common law of the realm¹. The principal source of our knowledge of the application of the canon law within England is the Provinciale of Lyndwood². The constitutions contained in Lyndwood, the general usages of the church and certain portions of the canon law admitted by those usages are still part of the law of the Church of England³. In accordance with local custom recognised by the canon law of papal Rome⁴ the rules of the general canon law were, however, considerably modified in their introduction to England⁵.

The ecclesiastical law of England⁶ is as much the law of the land as any other part of the law⁷. It may be, and is, altered from time to time by statute or Measure.

1 *Caudrey's Case* (1591) 5 Co Rep 1a: 'Albeit the kings of England derived their ecclesiastical laws from others, yet as many as were proved, approved and allowed here by and with a general consent are aptly and rightly called the king's ecclesiastical laws of England'. See the Ecclesiastical Licences Act 1533, preamble, now mainly repealed. See further *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239, [1945] 1 All ER 479; and see PARAS 306, 307 post.

2 Report of the Archbishops' Commission on Canon Law, 'The Canon Law of the Church of England' (SPCK 1947) 41, 42. An English translation (1534) of the canons collected by Lyndwood (but without his commentary) was reprinted in 1929 (J. V. Bullard and H. C. Bell, Lyndwood's Provinciale).

3 *Martin v Mackonochie* (1868) LR 2 A & E 116 at 153; on appeal LR 2 PC 365.

4 X. 5, 3, 42 and C. X. 1, 4, 11 (cf. para 305 note 3 post); Dictionnaire de Droit Canonique ad verbum 'coutume'. Papal decrees, however, could not be repealed or varied; 'tollere vel alterare non potest episcopus nec aliquis papa inferior': Lyndwood 136, gloss on Nos Misericordiam.

5 *Martin v Mackonochie* (1868) LR 2 A & E 116 at 153; appeal LR 2 PC 365.

6 When the question arises as to what is the English ecclesiastical law it is not ascertained by calling witnesses to prove it, as if it were foreign law, but, taking judicial notice of what the law is, it is ascertained by argument founded on legal principles and authorities: *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 446, HL, per Lord Blackburn. This was the course pursued by the Court of King's Bench, when Lord Hardwicke was Chief Justice, in *Middleton v Crofts* (1736) 2 Atk 650. It was expressly approved in the House of Lords in *R v Millis* (1844) 10 Cl & Fin 534 at 681, HL; and *Bishop of Exeter v Marshall* (1868) LR 3 HL 17, as to which see PARA 307 note 3 post, See also *Caudrey's Case* (1591) 5 Co Rep 1 a.

7 See *Edes v Bishop of Oxford* (1667) Vaugh 18 at 21.

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(iii) Canon Law

305. Canons and the jus commune.

There existed from very early times in Western Europe collections of canons of an unsystematic and incomplete character drawn up mainly to meet local and temporary needs¹. Except as to purely local matters these local canons were superseded in the English ecclesiastical courts by the codification of the canon law in the *Corpus Juris Canonici*, which was the foundation of the *ius commune*². After the time of Gratian, such canons as were made in England were made simply for the purpose of emphasising the rules of the *Corpus Juris Canonici* and of applying them to local needs, and devising new means of enforcing them³.

1 This early history is discussed in the Report of the Archbishops' Commission on Canon Law, 'The Canon Law of the Church of England' (SPCK 1947), Chapter II.

2 The following account of this compilation is taken from Wright and Neil's Protestant Dictionary: The *Corpus Juris Canonici* begins with what is known as the 'Decretum Gratiani', the private work of Gratian, a Benedictine monk of Bologna, who is known as 'the father of canon law'. Published in about 1150 in three books entitled 'Concordia Discordantium Canonum', it was a successful attempt to codify the scattered and conflicting canons of the Roman Patriarchate on the lines of the civil law, and superseded all previous works. The first book, entitled 'De Jure Naturae et Constitutionis', deals with the sources of canon law and of ecclesiastical persons and officers, and is divided into 101 distinctiones, which are subdivided into canones. The second book consists of thirty-six causae (cases for solution), subdivided into quaestiones (the points solved in each case, together with authorities). The third book, entitled 'De Consecratione', gives in five distinctiones the law on church ritual and the sacraments. Gratian's original notes (dicta Gratiani) are of great weight, as also are the passages headed 'Palea' and supposed to be the notes of his pupil Paucapalea. Gratian's book contained the canons of the second council of Lateran 1139 and decretals of Innocent II, which seem to have been written between 1130 and 1148 (Richter x). The next hundred years were very fruitful in legislation, so that at the end of that time the Decretum had become antiquated. During this period Innocent III alone (Dr Hunter says) published 4,000 laws, entitled 'Decretales Extravagantes', ie extra (decretum Gratiani) vagantes, some of which are incorporated in the 'Compilationes Antiquae'. The Compilatio Prima has formed a pattern for all subsequent compilations, the matter being divided into five books, the subject of each being sufficiently indicated in the following hexameter: 'Judex, Judicium, Clerus, Connubia (or Sponsalia), Crimen'. Neither the Decretum nor the Compilationes (except tertia and quinta) ever received solemn papal sanction; they did not form part of the papal statute law in the same way as the collections promulgated by the Popes themselves.

The second part of the *Corpus Juris Canonici* comprises the Decretals of Gregory IX, officially promulgated in 1234. They are known as the 'Libri extra' (Decretum) and comprise decided cases in five books. The Decretals of Boniface VIII were promulgated in 1298 as a sort of supplement to Gregory's five books, and were called 'Liber sextus'. The Decretals of Clement V, promulgated in 1313, but withdrawn and promulgated again in 1317 by John XXII, are known as the 'Clementinae'. Each of these papal Decretals was a statute book deriving its force from the Pope who published it, and who being Pope was competent to ordain binding statutes for the Catholic Church and every part of it: Maitland, Roman Canon Law in the Church of England 3.

The *Corpus Juris Canonici* closes with the Extravagantes of John XXII, and with seventythree Decretals of Popes from Boniface VIII to Sixtus V (1298 to 1484), known as 'extravagantes communes'. The method of citing the canon law is very complicated and varies for the different parts; see Ayliffe's explanation set out in note 3 infra.

3 Eg Archbishop Richard's canons made at London in 1175 consist of extracts from the decrees of some Pope or council (see Johnson, Ecclesiastical Laws, where these canons are set out in full). These were followed in 1195 by canons made by the Archbishop of Canterbury, as papal legate, at York, and from this date onwards to the Reformation there was a continual stream of legatine and archiepiscopal canons, the most important being those of the papal legates Otho and Othobon, who came to England in 1237 and 1268 respectively.

Much of the canon law set forth in archiepiscopal constitutions is merely a repetition of the papal canons for the purpose of making them better known in remote localities; part is ultra vires, and the rest consists of local regulations which are only valid insofar as they do not contravene the *ius commune*, ie the law common to the universal church as opposed to the constitutions or special customs or privileges of any provincial church: see

Maitland, Roman Canon Law in the Church of England 4. In England the legatine and provincial constitutions do not even touch upon half the recognised topics of ecclesiastical jurisprudence. The legatine constitutions are those of Otho and Othobon. Together with the provincial constitutions (principally of Canterbury) they are collected in John of Athon; Lyndwood's Provinciale; Johnson, Ecclesiastical Laws; Wilkins, Concilia; Spelman, Concilia; Powicke and Cheyney, Councils and Synods.

The following explanation of the method of reference to the canon law is derived from Ayl Par xlv. A similar explanation as to the civil law will be found in Ayl Par xliii.

'X. 1, 9, 6, 4' means book 1, title 9, chapter 6 and PARAGRAPH 4 of the Decretals of Pope Gregory IX. 'X' denotes the Decretals of that pope.

'VI. 3, 4, 23' means book 3, title 4 and chapter 23 of the sixth book of the Decretals by Pope Boniface VIII.

'Cl. 2, 5, 2' means book 2, title 5 and chapter 2 of the Clementinae.

'Extra. 14, 3' means title 14 and chapter 3 of the Extravagantes of Pope John XXII.

'Com. 3, 2' means book 3 and chapter 2 of the Communes.

'Dist. 26, c. 2' means distinction 26 and chapter 2 of the first part of the Decrees.

'16, Q. 7, 3' means cause 16, question 7 and chapter 3 of the second part of the Decrees.

'Con. 1, 2' means distinction 1 and chapter 2 of the third part of the Decrees.

All these books of the canon law are sometimes quoted by the initial words of the law or chapter itself, and by the words of the title, thus: *ex specialis*, *extra de Judaeis*, ie cap. 17, tit. 6, of the fifth book of Gregory's Decretals; the words '*extra*' imports these Decretals as well as the Extravagantes.

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306. The canon law of Europe and the law of England.

Historically speaking the canon law of papal Rome was applied, subject to modifications by local custom¹, within the realm of England and was enforced by a separate system of courts Christian². The canon law has never, however, as a body of laws, formed part of the law of England³.

At the Reformation such of the canon law as applied in England and was not 'repugnant, contrariant or derogatory' to the laws or statutes of the realm, nor to the prerogatives of the Crown, received statutory recognition⁴. The ecclesiastical law, including such of the canon law as was embraced at the Reformation, is thus now part of the law of the realm⁵. Its authority, however, depends not upon its statutory recognition but upon its incorporation as such⁶ into the laws of the land at the Reformation⁷.

1 See PARA 304 ante.

2 See Davies, *The Canon Law of England*; Zeitschrift der Savigny-Stiftung für Rechtsgeschichte XXXIV Kanon Abt. III (1933) 353 et seq; Maitland, *Roman Canon Law in the Church of England*, Essays I, II; Brooke, *The English Church and the Papacy from the Conquest to the Reign of John*; Report of the Archbishops' Commission on Canon Law, 'The Canon Law of the Church of England' (SPCK 1947) 36 et seq. Cf. the Report of the Ecclesiastical Courts Commission 1833: Ogle, *Canon Law in Mediaeval England*; Phillimore, *Ecclesiastical Law* (2nd Edn) 1109; R. C. Mortimer, *Western Canon Law*; Bursell, *The Fusion of the Common Law and the Ecclesiastical Law* (1972), Oxford D. Phil. thesis.

3 This was the unanimous opinion of the judges advising the House of Lords in *R v Millis* (1844) 10 Cl & Fin 534 at 680, HL, per Tindall CJ, where the House was equally divided, Lord Brougham, Lord Campbell and Lord Denman dissenting from the judges' opinion which was, however, quoted by Blackburn J in his advice to the House of Lords in *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 35, and it was expressly approved in the judgment of Lord Chelmsford LC at 46.

4 35 Hen. 8 c. 16 (Canon Law) (1543), s 3 (repealed); Submission of the Clergy Act 1533, s 7 (repealed). See 1 Bl Com (14th Edn) 82; and *Read v Bishop of Lincoln* (1889) Roscoe's Rep 1 at 17, per Archbishop Benson.

5 See PARA 304 ante.

6 This is in any event assured by the numerous post-Reformation ecclesiastical statutes.

7 See PARA 307 post.

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307. Conditions of continued acceptance.

Since the Reformation common lawyers have explained the application of the canon law of papal Rome within England on the basis of its reception¹. For this reason, in order to show that any directive, rule or usage of pre-Reformation canon law is now binding, it must be pleaded and proved² to have been recognised, continued and acted upon in England since the Reformation³.

1 See *Le Case de Commendam* (1612) Dav Ir 68; Hale, History of the Common Law 24. As to the historical position, see PARA 306 ante.

2 See PARA 304 note 6 ante.

3 *Re St Mary's Westwell* [1968] 1 All ER 631, [1968] 1 WLR 513; *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 53, 54, where the question was whether a certain testimonial required by the old canon law of papal Rome (and apparently repeated in the canons of 1603) could now be insisted on by a Church of England bishop as forming part of the common law of the realm, and it was held that it could not be as there was no proof of continuous user. The older domestic canons (eg Peckham (1288)) 'can hardly be considered as carrying with them all their first authority': see *Burgess v Burgess* (1804) 1 Hag Con 384 at 393, per Sir William Scott. Apostolic canons, which nowhere now survive in use, could nowhere be acted upon: *Read v Bishop of Lincoln* (1889) Roscoe's Rep 1 at 17, per Archbishop Benson. This rule of pleading and practice may be seen either as an example of the application of desuetude ('Sicut enim moribus utentium in contrarium nonnullae leges hodie abrogatae sunt ita moribus utentium ipsae leges confirmantur': Decretum Gratiani, distinctio IV, canon 3), or, more probably, as a procedural convenience: see Bursell, The Fusion of the Common Law and the Ecclesiastical Law (1972), Oxford D. Phil. thesis 176. See also PARA 1262 post, and PARA 1264 note 3 post.

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308. Post-Reformation canons.

The canons now in force are the Revised Canons Ecclesiastical of 1964 and 1969 as subsequently added to and amended¹. These are in part, like earlier post-Reformation canons, directives for the guidance of the Church in ecclesiastical matters and in part subsidiary legislation² made under the direction of the Crown³, originally in the Convocations of Canterbury and York⁴ and now, since 1970, by the General Synod⁵. The Queen's assent and licence is necessary before canons can be promulgated⁶, and no canon may be made which is contrary or repugnant to the Queen's royal prerogative or the customs, laws or statutes of the realm⁷.

The Revised Canons are, like those of 1603, binding on the clergy in ecclesiastical matters⁸. As regards their application to the laity in general, it is still the position⁹ that the canons are not of their own force binding upon them¹⁰, but they may, it seems, form the basis of legal obligation in the case of lay person who have accepted office in the Church¹¹.

Insofar as any of the canons may be a reiteration or declaration of ancient usages and laws of the Church which had previously been received into common law¹², they obtained no additional force by their incorporation into the post-Reformation canons¹³. Insofar as any canon embodies provisions of¹⁴, or is authorised by¹⁵, an Act of Parliament or Measure, reference must be made to that Act or Measure in order to ascertain the force of those provisions.

The Revised Canons Ecclesiastical do not provide a complete statement of the law of the Church of England¹⁶. They are a revision of the Code of Canons issued in 1603 and cover roughly the same areas of church life, but like that code they presuppose both the common and statute law of England and the general pre-Reformation canon law of the western Church, except where that canon law has been affected by contrary statute or custom in England¹⁶. In this they differ to some extent from the much more comprehensive code of the Roman Catholic Church, and they follow the English secular legal tradition in their dislike of complete codification¹⁶.

1 These are referred to in this title as Revised Canons Ecclesiastical. They were published in 1969 under the title 'The Canons of the Church of England' (SPCK), and have been amended by Canons promulgated 6th October 1969, 9th July 1972, 20th February 1973 and 4th February 1975, Amending Canon No. 1 promulgated 10th November 1972, Amending Canon No.2 promulgated 4th February 1975, and Amending Canons Nos. 3 and 4 promulgated 4th July 1975. These last (Nos. 3 and 4) come into operation on the day appointed by the archbishops under the Church of England (Worship and Doctrine) Measure 1974, s 7 (2), for the coming into force of that Measure. At the date (1st May 1975) at which this volume states the law no such date had been appointed, but the law stated in this volume is that which will be in force when that Measure is in force.

The previous canons were those of 1603. They were amended from time to time and a new canon was added in each of the years 1892, 1921 and 1948. In relation to the canons of 1603 it should be noted that it was the latin text which was accepted by both Houses of the Convocation of Canterbury and was confirmed by letters patent under the royal seal; the usual current translation has no formal authority: Bullard, *Constitutions and Canons Ecclesiastical 1604*, Introduction p. xvii. As to the position of the Convocation of York with regard to the Canons of 1603, see Bullard, *Constitutions and Canons Ecclesiastical 1604*, Introduction p. xvii. The history of those is described in the Report of the Archbishops' Commission on Canon Law, 'The Canon Law of the Church of England' (SPCK 1947) 72-75.

Canons Ecclesiastical (1603), Canon 113 proviso, remains unrepealed: this requires a minister not to reveal or make known to any person any crime or offence revealed to him by confession, 'except they be such crimes as by the laws of this realm his own life may be called into question for concealing the same'. As to absolution, see PARA 1047 post.

2 See the text and note 15 infra.

3 See PARA 400 post.

4 Submission of the Clergy Act 1533, ss 1, 3. As to the summoning of the convocations, see PARA 443 post; as to the convocations generally, see PARA 442 et seq post; Phillimore, *Ecclesiastical Law* (2nd Edn) 1530-1564; Cripps, *Church and Clergy* (8th Edn) 5-10.

5 Synodical Government Measure 1969, s 1 (1), (3), Sch. 1; Revised Canons Ecclesiastical, Canon H1 para 1. This canon was added by canon promulgated 7th October 1969.

6 Submission of the Clergy Act 1533, s 1; Synodical Government Measure 1969, s 1 (3) (a). Indeed the Queen's licence was required before the convocations could even confer to enact a canon: see *Case of Convocations* (1611) 12 Co Rep 72.

7 Submission of the Clergy Act 1533, s 3; Synodical Government Measure 1969, s 1 (3) (b). This provision does not, however, apply to any rule of ecclesiastical law relating to any matter for which provision may be made by canon in pursuance of the Church of England (Worship and Doctrine) Measure 1974: s 6 (1). These matters are worship (see s 1, and PARA 935 post), and assent to doctrine (see s 2, and PARA 660 post).

8 *Matthew v Burdett* (1703) 2 Salk 412.

9 *Cox's Case* (1700) 1 P Wms 29 at 32; *Middleton v Crofts* (1736) 2 Atk 650; *More v More* (1741) 2 Atk 157; *R v Dibdin* [1910] P 57, CA; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL.

10 The original reason was that the laity were not represented in convocation: *Case of Convocations* (1611) 12 Co Rep 73; *Bishop of St David's v Lucy* (1699) Carth 484; *Matthew v Burdett* (1703) 2 Salk 412; *Cox's Case* (1700) 1 P Wms 29. Although the laity are now represented on the General Synod (see PARAS 390, 418 et seq post) the general force of the canons has been settled for too long for any alteration of that position without an Act of Parliament or a Measure having equivalent force and effect.

Until the coming into force of the Ecclesiastical Jurisdiction Measure 1963 disciplinary proceedings might be brought against a layman in the spiritual courts although this jurisdiction had become virtually obsolete: *Phillimore v Machon* (1876) 1 PD 481 at 487-489, per Lord Penzance, Dean of the Arches; *Redfern v Redfern* [1891] P 139 at 145, CA, per Lindley LJ and at 147, per Bowen LJ; *Elliott v Albert* [1934] KB 650 at 660, CA, per Scrutton LJ and at 666, per Maugham LJ; *Cole v Police Constable 443A* [1937] 1 KB 316 at 333, [1936] 3 All ER 107 at 118, DC, per Goddard J; *Blunt v Park Lane Hotel Ltd* [1942] 2 KB 253 at 256, [1942] 2 All ER 187 at 188, CA, per Lord Clauson and at 257, 259, and at 189, 190, per Goddard LJ; *Manchester Corp'n v Manchester Palace of Varieties Ltd* [1955] P 133 at 149, 150, [1955] 1 All ER 387 at 393, 394, Court of Chivalry, per Lord Goddard, Surrogate. This jurisdiction was not expressly abolished by the Ecclesiastical Jurisdiction Measure 1963 save as regards the jurisdiction of consistory courts to hear and determine proceedings against lay officers of a church: s 82 (2) (c). The practical effect of that Measure, however, seems to be that although the jurisdiction of the ecclesiastical courts over the laity in disciplinary matters is not specifically abolished (see ss 49, 82 (4)), there is no machinery for its implementation: cf. ss 14, 17, 69, and PARA 1350 et seq post.

11 Prior to 1963 such persons as deaconesses, readers and licensed lay workers had no separate legal status but, no doubt, if need had arisen, the judicial discretion as to whether disciplinary proceedings might have been promoted against them would have been exercised so as to permit such proceedings. Since then these persons have been accorded legal recognition (see PARA 759 et seq post). Although there is no procedure for the implementation of disciplinary proceedings against them (see supra) there can be no doubt that deaconesses, readers, licensed lay workers, churchwardens, lay judges of ecclesiastical courts and lay holders of other offices admission to which is for the time being regulated by canon are under an obligation to observe such canons as apply to them: see the Church of England (Worship and Doctrine) Measure 1974, s 2. It seems that by accepting an office or position within the church such persons become consensually bound: see *Forbes v Eden* (1867) LR 1 Sc & Div 568 at 576, HL, per Lord Chelmsford; but cf. the Synodical Government Measure 1969, Sch. 2, art. 6 (a) (ii). The appropriate sanction applicable to such a person for breach of the ecclesiastical law (save where a statutory sanction is provided) would usually be deprivation of his office or the revocation of his licence, and it seems that civil proceedings (eg for an injunction) could, if necessary, be instituted in the temporal courts. As to the removal of a chancellor, see PARA 1277 post.

12 See PARAS 306, 307 ante. For assistance on this question, see Bullard, *Constitutions and Canons Ecclesiastical* 1604.

13 *R v Allen* (1872) LR 8 QB 69 at 75, per Blackburn J, where it was decided that the usage stated in Canons Ecclesiastical (1603), 89, concerning the election of churchwardens was valid, 'and this can only be so, because the rule of the canon law had been adopted by our law'. See also *R v Bishop of Salisbury* [1901] 2 KB 225, CA; *Harris v Buller* (1798) 1 Hag Con 463n (Court of Arches); *Escott v Mastin* (1842) 4 Moo PCC 104 at 128.

14 See eg the Revised Canons Ecclesiastical, Canons G 1-G 3 (amended by Amending Canon No. 4), the authority for which is derived from the Ecclesiastical Jurisdiction Measure 1963, ss 1-3. For an earlier example,

see the Canons Ecclesiastical (1603) 14 (repealed), the authority for which originally flowed from the Act of Uniformity 1558 (repealed) and later from the Act of Uniformity 1662 (largely repealed).

15 For statutory powers to make canons, see PARA 400 note 1 post.

16 The Canons of the Church of England (SPCK 1969), Introduction by the Archbishops of Canterbury and York.

UPDATE

308 Post-Reformation canons

NOTE 1--The appointed day was 1 September 1975. The Canons have been further amended by Canons promulgated 4 February 1975, 25 February 1976, Amending Canon No 5 promulgated 5 July 1977, Amending Canon No 6 promulgated February 1979 and Amending Canons Nos 7, 8 promulgated August 1980.

NOTE 7--Nor does it apply to any rule of ecclesiastical law relating to any matter for which provision may be made by canon in pursuance of Church of England (Miscellaneous Provisions) Measure 1976 s 1: s 1(3).

NOTE 10--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(iv) Recognition of Religious Bodies/309. Recognition of religious bodies by the state.

(iv) Recognition of Religious Bodies

309. Recognition of religious bodies by the state.

The extent to which ecclesiastical bodies other than the Church of England are recognised by the state may be gauged by reference to the statutory facilities afforded to any congregation or society or body of persons associated for religious purposes¹, even though they object to being designated by any distinctive religious appellation².

1 See the Trustee Appointment Act 1850, s 1 (repealed with savings by the Charities Act 1960, ss 35 (6), 48, Sch. 7, Part I; Education Act 1973, s 1 (4), Sch. 2, Part I). The Charities Act 1960, s 35, makes similar provisions to those contained in the Trustee Appointment Act 1850, s 1: see CHARITIES vol 8 (2010) PARA 280. See PARAS 343-344 post.

2 See the Places of Worship Registration Act 1855, Sch. A, and PARA 342 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(iv) Recognition of Religious Bodies/310. Elements involved in recognition.

310. Elements involved in recognition.

Recognition necessarily presupposes that individual persons can express their religious beliefs in some recognisable form, that such expression may reasonably be taken to be characteristic of them as individuals, and that a society of persons having some religious tenets in common, expressed in some recognisable form, can have a continued existence independent of the individuals comprising the society¹. It therefore presupposes a statement or other outward expression of the common faith, and some organisation by means of which the individuals comprising the society may be retained in or brought into relationship with this outward expression².

1 'There is a presumption of consistency of opinion on serious, especially religious, questions': *Shore v Wilson* (1842) 9 Cl & Fin 355 at 531, HL, per Coleridge J.

2 A person born and bred a protestant and of a protestant family must be presumed to be a protestant unless he has done some act to denote a change in his religious persuasion: *Yelverton v Longworth* (1864) 10 Jur NS 1209, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(1) CHURCH AND LAW/(iv) Recognition of Religious Bodies/311. National churches.

311. National churches.

The development of territorial states after the dissolution of the Roman Empire led in many states, including England, to the recognition of separate national churches¹. The accepted legal doctrine is that the Church of England is a continuous body from its earliest establishment in Saxon times². A church formed by separation on a national or territorial basis may be identical with the portion of the church existing before the acts resulting in separation³, and may retain all the powers of organisation, discipline and self-government which previously existed; its identity is not necessarily affected by any changes which may result from the united action of the civil power and of its own power of self-government⁴. Where a church has been established its continuity is not destroyed by a mere divorce from civil control⁵.

1 For an instance of the qualifying effect of a system of civil government on the organisation of a church, see *Zacklinsky v Polushie* [1908] AC 65, PC; see also *Merriman v Williams* (1882) 7 App Cas 484 at 507, PC.

2 See PARA 345 post.

3 *Merriman v Williams* (1882) 7 App Cas 484 at 510, PC.

4 The identity of the Church of England from the Reformation to the present day cannot be questioned, whatever changes may have been made by the united action of Parliament and Convocation: *Baker v Lee* (1860) 8 HL Cas 495 at 504.

5 *Re Clergy Orphan Corp'n Trusts, Clergy Orphan Corp'n v Christopher* [1933] 1 Ch 267; but not, it seems, if the disestablished church should cease to recognise the existing articles, doctrines, rites and religious ordinances: see at 273, per Farwell J; cf. para 333 note 1 post; and see infra, and PARAS 314, 335 post. Thus the Irish Church Act 1869 dissolved the union created by Act of Parliament between the churches of England and Ireland (s. 2; see PARA 348 post), but left the Church of England untouched; and while it abolished in Ireland the existing ecclesiastical corporations and all jurisdiction of ecclesiastical courts and vested all property of any ecclesiastical person in the commissioners appointed by the Act, it preserved the continuity of the church by enacting that the existing ecclesiastical law, articles, doctrines, rites, rules, discipline and ordinances of the church, with such modifications as should after the disestablishment of the church be made according to its constitution, should be deemed to be binding on the members for the time being as if those members had mutually contracted and agreed to abide by and observe them, and should be capable of being enforced by the temporal courts in relation to any property reserved or given to or taken and enjoyed by the church under the Act as if that property had been expressly given upon trust to be held, occupied and enjoyed by persons who should observe and keep and be in all respects bound by the said ecclesiastical law, articles, doctrines, rites, rules, discipline and ordinances. Cf. *Re Marshal Beresford's Trust Fund, Lord Aldenham v Archbishop of Armagh* (1917) 33 TLR 208 (title of Lord Primate of All Ireland held not to be taken from Archbishop of Armagh by disestablishment of the Church of Ireland); and *Re Friend of the Clergy's Charters, Friend of the Clergy v A-G* [1921] 1 Ch 409.

A similar provision is contained in the Welsh Church Act 1914, s 3; cf. *Re Clergy Orphan Corp'n Trust, Clergy Orphan Corp'n v Christopher* supra (children of clergymen in Wales ordained both before and after the Welsh Church Act 1914 held entitled to be admitted to the benefits of a charity incorporated in 1809 for the benefit of orphans of clergymen of the established church); and *Re Friend of the Clergy's Charter, Friend of the Clergy v A-G* supra (clergymen ordained to the ministry of the established church held to retain their status and to be entitled to benefit from a charity for clergymen of the established Church of England and Ireland while holding a consistent cure in the disestablished Churches of Wales or Ireland, or in the Episcopal Church of Scotland or in the British dominions; so also, having regard to the Irish Church Act 1869, s 68, clergymen ordained to the ministry of the disestablished Church of Ireland).

The courts will not interfere with the rules and regulations of a disestablished church unless to protect some civil right or interest which is said to be infringed by their operation; and the only remedy a dissatisfied member of that church has is to withdraw: *Forbes v Eden* (1867) LR 1 Sc & Div 568, HL.

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312. Other religious bodies.

All religious bodies enjoy the same general recognition by law, strengthened in the single case of the Church of England by the circumstances of its connection with the state¹, and modified in the case of other religious bodies by such special enactments as survive to mark in each case the history of its evolution².

1 For a recent review of this connection, see the Report of the Archbishops' Commission on Church and State (CIO 1970).

2 As to religious bodies other than the Church of England, see PARA 1386 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(i) In general/313. Meaning of 'Anglican Communion'.

(2) THE ANGLICAN COMMUNION

(i) In general

313. Meaning of 'Anglican Communion'.

The Anglican Communion is a fellowship of churches historically associated with the British Isles¹ which have certain characteristics in common, including standards of faith and doctrine and, to some extent, forms of worship². It embraces all those churches and dioceses which are in communion with the see of Canterbury, recognise the Archbishop of Canterbury as the focus of unity, and uphold and propagate the catholic and apostolic faith based upon the scriptures interpreted in the light of Christian tradition, scholarship and reason as expressed in the Book of Common Prayer and the Ordinal and their derivatives.

It includes the Church of England, the Episcopal Church in Scotland³, the Church in Wales⁴, the Church of Ireland⁵, the Church of England in Australia, the Anglican Church of Canada, the Church of the Province of New Zealand, the Protestant Episcopal Church in the United States and numerous other Churches in the Commonwealth and overseas which share the same traditions of doctrine and worship⁶.

There are also certain Churches with which the Church of England has relations of full communion⁷ but which are not within the Anglican Communion, for example the Old Catholic Churches and the Church of South India⁸.

1 Report of Lambeth Conference 1930, p. 153.

2 See PARA 302 ante, 332-336 post; and cf. *Bishop of Natal v Gladstone* (1866) LR 3 Eq 1 at 47, and *Re Clergy Orphan Corp'n v Christopher* [1933] 1 Ch 267. See the Church of England Year Book 1975, p. 187.

3 The Episcopal Church in Scotland is a free church. Formerly the established Church of Scotland, it was disestablished in 1689. The Crown may not appoint bishops in Scotland, and the Episcopal Church in Scotland may not be a branch of the established Church of England: Union with Scotland Act 1706, s 2. As to restrictions on the admission of its ministers to preferment in England, see PARA 670 post. As to the status of ministers, see PARA 311 note 5 ante.

4 As to the Church in Wales, see PARA 322 et seq post.

5 As to the Church of Ireland, see PARA 348 post.

6 See PARA 318 post. A church organised on a consensual basis may without ceasing to be in communion with the Church of England cease to be legally a church in connection with the Church of England. Thus the Church of the Province of South Africa forms part of the Anglican Communion although it is not in connection with the Church of England as by law established (*Merriman v Williams* (1882) 7 App Cas 484, PC; and cf. *Darroll v Tennant* 1932 CPD 406); and the Archbishop of Cape Town is not bishop of the Church of England as by law established, but a bishop of the Consensual Church of the Province of South Africa in communion with the Church of England (*Re Colonial Bishopricks Fund* 1841 [1935] Ch 148). Although the Republic of South Africa is no longer a member of the Commonwealth, the Church of the Province of South Africa extends beyond the republic and falls under many different administrations: see Church of England Year Book 1975, p. 214. That a church may be severed from the Church of England and yet remain in communion with it has been recognised by statute: see the Indian Church Act 1927, s 4.

Other Churches and councils within the Anglican Communion are the Episcopal Church of Brazil, the Church of the Province of Burma, the Church of the Province of Central Africa, the Holy Catholic Church in China, the Church of the Province of the Indian Ocean, the Holy Catholic Church in Japan, the Episcopal Church in

Jerusalem and the Middle East, the Church of the Province of Kenya, the Province of Melanesia, the Anglican Council of South America, the Council of the Church of South East Asia, the South Pacific Anglican Council, the Church of the Province of Tanzania, the Church of Uganda, Rwanda, Burundi and Boga-Zaire, the Church of the Province of West Africa and the Church of the Province of the West Indies. See the Church of England Year Book 1975, pp. 187, 188, 191-232.

7 As to the meaning of 'full communion' as distinguished from 'inter-communion' etc., see the Report of the Archbishops' Commission on Intercommunion, 'Intercommunion Today' (1968) at 17 et seq.

The phrase 'in communion with the Church of England' is used in eg the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, ss 3, 4 (1), 6 (2). The Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865), uses the phrase 'the Church of England or a church in communion with the Church of England'. In its original form this rule used the phrase 'Church of England or... another church of the Anglican Communion or any overseas church in communion with the Church of England', suggesting that, at any rate for the purpose of the rules, the distinction between actual membership of the Anglican Communion and being in communion with the Church of England is no longer significant.

8 Churches within this category include those which have evolved from the union of Anglican churches with Churches of other Christian traditions; eg the Church of South India (formed in 1947 when Anglican and Methodist Churches in India united with the South India United Church, itself the product of an earlier union between Congregational, Presbyterian and Reformed Churches), the Church of North India (formed in 1970 of Anglican, Presbyterian, Congregational, Baptist, Methodist and other Churches), the Church of Pakistan (formed in 1970 of Anglican, Methodist, Presbyterian and Lutheran Churches), and the United Church of Sri Lanka (currently being formed). In addition the Church of England is in communion with the Old Catholic Churches (ie in the Netherlands, Austria, Czechoslovakia, Germany, Poland, Switzerland, the United States and Yugoslavia), with the Spanish Reformed Episcopal Church, the Lusitanian Church of Portugal, the Philippine Independent Catholic Church, and with the Churches of Norway, Denmark, Iceland, Sweden and Finland. See the Church of England Year Book 1975, pp. 232-237.

UPDATE

313 Meaning of 'Anglican Communion'

NOTE 7--Rule 44 now r 54; SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(i) In general/314. The Lambeth Conference and other bodies.

314. The Lambeth Conference and other bodies.

To co-ordinate the work of the Anglican Communion there meets periodically at Lambeth a conference of bishops under the presidency of the Archbishop of Canterbury¹. This body has no legal basis, and depends for the carrying into effect of any resolutions that it passes on the voluntary acts of the individuals composing it and their acceptance by the churches represented by them, but various resolutions passed by the conference have been received with general acceptance by all the churches represented, and have thereby derived on a consensual basis an authoritative character in the churches which have accepted them². To bridge the gap between conferences the Central Consultative Body of the Lambeth Conference was formed, consisting of not less than eighteen members appointed by the Archbishop of Canterbury with due regard to regional requirements after consultation with metropolitans and presiding bishops³.

Pan-Anglican Congresses have also been held, attended by ordained and lay representatives from all the dioceses in the Anglican Communion⁴, and in 1969 an Anglican Consultative Council was set up under the presidency of the Archbishop of Canterbury, with members from each Church or province in the Anglican Communion. It meets in alternate years. It has no legislative powers, but provides a forum for consultation, liaison and the sharing and dissemination of information. It co-operates with the World Council of Churches and encourages Anglican participation in the ecumenical movement⁵. The Anglican Communion maintains an Anglican Centre in Rome⁶.

1 The conference met in 1867, 1878, 1888, 1897, 1908, 1920, 1930, 1948, 1958 and 1968.

2 Notably eg the Lambeth Quadrilateral, which established as four fundamental conditions for church unity (1) the Holy Scriptures; (2) the Apostles' and Nicene Creeds; (3) the sacraments of baptism and the Lord's Supper; and (4) the historic episcopate: see the Report of the Lambeth Conference 1888, pp. 24, 81-91.

3 Report of the Lambeth Conference 1930, Resolution 50.

4 Congresses were held in London in 1908, in Minneapolis in 1954, and in Toronto in 1963.

5 See further the Church of England Year Book 1975, pp. 188-190.

6 See the Church of England Year Book 1975, p. 190.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(ii) Anglican Churches in the Commonwealth/315. English ecclesiastical law in the Commonwealth.

(ii) Anglican Churches in the Commonwealth

315. English ecclesiastical law in the Commonwealth.

The introduction of English law into a colony¹ does not carry with it English ecclesiastical law².

The various churches in the Commonwealth³ which are in communion with the Church of England are voluntary bodies⁴ organised on a consensual basis, but their own national legislatures have given many of them statutory recognition and powers⁵. Their rights, apart from statutes, will be protected by the courts and their discipline enforced exactly as in the case of any other voluntary body whose existence is legally recognised⁶.

The supremacy of the Crown in ecclesiastical affairs extends to all the Queen's dominions⁷. The Crown may not confer coercive jurisdiction, inasmuch as it has no power to create any new jurisdiction to administer any law other than the common law⁸. Where a church of any denomination was established in a colony before acquisition its rights might be maintained by the courts after acquisition⁹.

1 See COMMONWEALTH vol 13 (2009) PARA 807.

2 *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115 at 152. The Queen's troops, however, carry with them ecclesiastical as well as civil law: *R v Brampton* (1808) 10 East 282 at 288.

3 The word 'Commonwealth' is here used in its widest sense to designate the whole of those territories of which the Queen is recognised as the head: cf. COMMONWEALTH vol 13 (2009) PARA 701.

4 See *Bishop of Natal v Green* (1868) LT 112.

5 Until 1866 the Crown on the advice of the imperial government granted letters patent creating dioceses and appointing bishops where it was expedient and where funds were available (*Bishop of Natal v Gladstone* (1866) LR 3 Eq 1 at 25), but this practice has since ceased. In order to ascertain the legal nature of the several church organisations abroad and their precise relation to the Church of England it is necessary to study the history and constitutions of each particular body and the local legislation affecting it. For much valuable historic information, see the Report of the Archbishops' Committee on Church and State (SPCK 1916), 94-192. See also the Church of England Year Book 1975, pp. 187 et seq.

6 See PARAS 338-342 post.

7 Articles of Religion 37. As to the royal supremacy, see PARAS 318, 352 et seq post. The effect of this provision is limited, however, by the constitutional developments of modern times. As to the Crown's powers after the granting of an independent legislature, cf. *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115 at 148, and *Bishop of Natal v Gladstone* (1866) LR 3 Eq 1 at 42; and see also *Darroll v Tennant* 1932 CPD 406. See also note 5 supra.

As a general rule no person can be consecrated in England to the office of bishop without the licence of the Crown for his election to that office and the royal mandate under the Great Seal for his confirmation and consecration, and formerly every person so consecrated was required to take the oaths of allegiance and supremacy and of due obedience to the Archbishop of Canterbury: see the Appointment of Bishops Act 1533, s 5; *Evans and Kiffins v Askwith* (1627) W Jo 158; *R v Archbishop of Canterbury* (1848) Jebb's Report 1; *R v Archbishop of Canterbury* [1902] 2 KB 503. See also PARA 320 post.

It is lawful for the Archbishop of Canterbury or the Archbishop of York in consecrating any person to the office of bishop for the purpose of exercising episcopal functions elsewhere than in England to dispense, if he thinks fit, with the oath of due obedience to the archbishop (Colonial Clergy Act 1874, s 12); and it is now customary, when it is proposed that the bishop should exercise his functions in a sphere under another metropolitan, for the oath of due obedience to that metropolitan to be substituted and a declaration made of deference to the

Archbishop of Canterbury, as approved by the Lambeth Conference 1897. There are numerous missionary and extra-provincial bishops not attached to any dominion or colonial province who are under the jurisdiction of the Archbishop of Canterbury.

If a person is to be ordained to exercise his ministry in an overseas diocese and he is not a citizen of the United Kingdom and colonies the bishop who ordains him may dispense with the taking of the oath of allegiance (Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 5 (2): see PARA 317 post); neither is the oath required to be taken by an overseas clergyman who has been granted permission to officiate in the province of Canterbury or York (see ss 1, 2), nor by a subject or citizen of a foreign state who is consecrated to officiate as a bishop in a foreign state: Revised Canons Ecclesiastical, Canon C13 para 2; see PARAS 667, 669 post. As to the oath of allegiance, see further PARA 464 post.

Where a bishop is to serve in a colony the practice has prevailed of consecrating him in the colony without any licence or mandate from the Crown, which was necessary when he was consecrated in England: see Parliamentary Paper C (1873 no. 259-II) 51. The Crown does not dissent from this practice. Cf. the Indian Church Measure 1927, s 2. It was held in South Africa that a bishop elected by a synod and not appointed by the Crown was not the legal successor to a predecessor appointed by the Crown: *Darroll v Tennant* 1932 CPD 406; and cf. *Re Marshal Beresford's Trust Fund, Lord Aldenham v Archbishop of Armagh* (1917) 33 TLR 208.

8 *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115 at 154.

9 *Brown v Cure etc of Montreal* (1874) LR 6 PC 157.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(ii) Anglican Churches in the Commonwealth/316. Synodical organisation.

316. Synodical organisation.

The churches of overseas Commonwealth countries are organised on a synodical basis¹. It is the accepted policy of the Anglican Communion that dioceses should be grouped into provinces and provincial synods instituted².

1 The diocesan synod as the basis of the organisation of a colonial church was instituted at Toronto and Melbourne in 1851, at Adelaide in 1855, at Cape Town in 1856, at Auckland in 1857, at Sydney in 1866 and at Colombo in 1885. Synods are now established at the creation of every new see, and dioceses have where possible been grouped together into provinces, and provincial synods have been instituted in eg New Zealand, Canada, Australia, the West Indies and South Africa, while in Canada and Australia there are general synods embracing several provinces. The basis of representation in diocesan synods is the parish. Within the limits of the several constitutions synods have power to make rules for the regulation and discipline of the church. The constitutions usually provide for the election of bishops by diocesan synods, subject usually to confirmation by provincial synods, and contain a specific declaration of principles and doctrines which cannot be changed. Such declaration is based on the Lambeth Quadrilateral: see PARA 314 note 2 ante. As to the powers of synods, see *Lang v Purves* (1862) 15 Moo PCC 389; *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411; *Murray v Burgess* (1867) LR 1 PC 362.

2 Report of Lambeth Conference 1930, pp. 157-160. The minimum number of dioceses suitable to form a province is four: Report of Lambeth Conference 1930, p. 159. While many of the churches in the Anglican Communion within the Commonwealth are self-governing and fully independent of control of the Archbishop of Canterbury, there are a number of missionary sees which are extra-provincial dioceses under the metropolitan jurisdiction of the Archbishop of Canterbury, eg Bermuda, Gibraltar (which includes southern Europe) and The Sudan. Church of England chaplaincies in northern and central Europe form an extra-diocesan jurisdiction of the Bishop of London, exercised on his behalf by the Bishop of Fulham. See the Church of England Year Book 1975, p. 229.

UPDATE

316 Synodical organisation

NOTE 2--The diocese of Gibraltar and the areas of northern and central Europe under the jurisdiction of the Bishop of London are united to form the diocese in Europe, which is a diocese in the province of Canterbury (see PARA 455): Diocese in Europe Measure 1980.

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317. Ordination for ministry abroad.

Any bishop of a diocese in the province of Canterbury or York, on receiving a request from the bishop of an overseas diocese¹ that he should ordain as priest or deacon a person named in the request with a view to his exercising his ministry in the overseas diocese, may ordain that person and must indorse on his letters of orders that he has been ordained in pursuance of the request of the overseas bishop². If the person to be ordained is not a citizen of the United Kingdom and colonies, the oath of allegiance may be dispensed with³. Where it is desired that a person so ordained should exercise his ministry for a limited period in the province of Canterbury or York before going overseas, the archbishop may grant him temporary permission⁴ to do so⁵.

1 'Overseas diocese' means the diocese of an overseas bishop, and 'overseas bishop' means a bishop of the Church of England or a church in communion with the Church of England having a diocese or office elsewhere than in the province of Canterbury, the province of York, Ireland, Wales or Scotland: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 6 (1).

2 Ibid s 5 (1).

3 Ibid s 5 (2).

4 Ie under ibid s 1: see PARA 669 post.

5 Ibid s 5 (3).

UPDATE

317 Ordination for ministry abroad

TEXT AND NOTES--The 1967 Measure has effect as if the diocese in Europe (see PARAS 316, 455) were in the province of Canterbury and, accordingly, for the purposes of the 1967 Measure neither the bishop of the Diocese nor any other bishop holding office therein is an overseas bishop, nor is a clergyman who has been ordained priest or deacon by any such bishop an overseas clergyman: Diocese in Europe Measure 1980 s 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iii) Anglican Churches in Foreign Countries/318. Anglican churches in foreign states.

(iii) Anglican Churches in Foreign Countries

318. Anglican churches in foreign states.

The doctrine of the Church of England that the supreme government of all estates, whether ecclesiastical or civil, appertains to the sovereign power¹, applies not only to the Crown's power within the overseas dominions, but also to the supreme government of a foreign state within that state, and accordingly the direct application of the supremacy of the Queen is expressly limited to the realm and her other dominions¹, and in territories subject to a different sovereign power the doctrine has no application, either direct or indirect, which would interfere with the exercise of the supreme authority of that power².

1 Articles of Religion 37. See also PARA 315 ante.

2 The Protestant Episcopal Church in the United States of America, the Church in China and the Church in Japan are entirely self-governing and free from external authority.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iii) Anglican Churches in Foreign Countries/319. Clergy ministering abroad.

319. Clergy ministering abroad.

A priest of the Church of England, while expressly authorised to preach the Word of God and to minister the sacraments in the congregation where he shall be lawfully appointed, is at the same time ordained for the office and work of a priest in the Church of God¹ without any limitation, and he is therefore justified when abroad in carrying on his work as a priest in any congregation which accepts his ministrations and is not under the jurisdiction of any duly appointed bishop without any express appointment thereto, provided that his so doing is consistent with due obedience to his Ordinary and other chief ministers to whom is committed the government over him and with due diligence in serving the cure, if any, committed specially to his charge, and that he has at his ordination duly complied with the canonical requirements in respect of the title of such as are to be made ministers².

1 See the Book of Common Prayer, Form and Manner of Ordering of Priests, bishop's charge after the laying on of hands.

2 As to ordination, see PARA 654 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iii) Anglican Churches in Foreign Countries/320. Consecration of bishop to a spiritual sphere abroad.

320. Consecration of bishop to a spiritual sphere abroad.

In order to meet the needs of citizens of foreign countries residing abroad who profess the worship of God according to the principles of the Church of England and who, for the purpose of providing a regular succession of ministers for the service of their church, are desirous of having citizens of those countries consecrated bishops, the Archbishops of Canterbury and York, without any licence or mandate for election having been obtained, together with such other bishops as they call to their assistance, under Her Majesty's licence naming the person to be consecrated, may consecrate British subjects or the subjects of any foreign state to be bishops in any foreign country without requiring such of them as may be subjects of a foreign state to take the oaths of allegiance and supremacy and the oath of due obedience to the archbishop¹.

Bishops so consecrated may exercise, within such limits as may from time be assigned for that purpose in such foreign countries by Her Majesty, spiritual jurisdiction over the ministers of British congregations of the Church of England, and over such other protestant congregations as may be desirous of placing themselves under his or their authority², and the name of the church in which the bishop is appointed is certified to each bishop by the archbishop who consecrates him³.

This is the procedure followed where no part of the bishop's jurisdiction is within the realm⁴. In other cases a bishop having a diocese within a colony or dependency is given a spiritual sphere outside the colony with the approval of the Crown, and this may be done by a commission from the Archbishop of Canterbury naming the additional jurisdiction⁵.

When a bishop already consecrated is appointed to serve in a foreign country any territorial limitations of his jurisdiction are defined by warrant from the Crown if he has been consecrated under the foregoing provisions or, if not so consecrated, by the Archbishop of Canterbury with the consent of the Crown and in consultation with the society or body providing the endowment when submitting the appointment to the archbishop for his approval.

1 Bishops in Foreign Countries Act 1841, s 1. No person may, however, be so consecrated until the archbishop has obtained the Queen's licence, by warrant under her royal signet and sign manual, authorising the consecration and expressing the name of the person to be consecrated, nor until the archbishop has been fully ascertained of the sufficiency of that person in good learning, of the soundness of his faith and of the purity of his manners: s 3. The powers given by the Act have been used in relation to the consecration of bishops for service entirely in foreign parts, and the licence for the consecration specifies the territorial limits of the jurisdiction. If it becomes desirable to alter these territorial limits while the see is full, a fresh warrant specifying the new limits of the jurisdiction is issued under s 2.

2 Ibid s 2. The Act does not apply to the consecration of a bishop for a charge in India: Indian Church Measure 1927, s 2 (ii).

3 Bishops in Foreign Countries Act 1841, s 5. When a bishop is consecrated by the Queen's licence with the intent that he shall exercise the episcopal office in one of Her Majesty's possessions abroad, but no particular possession or territory is mentioned in the licence, it is usual for the Archbishop of Canterbury to issue to the bishop a commission assigning a sphere of action, but the bishop is not entitled to any territorial designation nor to be addressed as Lord Bishop. In such cases bishops commonly adopt a territorial designation for convenience of reference, but this not officially recognised, and the bishop should be described as 'the Right Reverend Bishop...': cf. Parliamentary Paper C (1882 no. 3228).

4 Where no part of a bishop's jurisdiction is within the realm he is styled 'Bishop in...'. Where the part of his jurisdiction from which he derives his title is within the realm he is styled 'Bishop of...'.⁵

5 This course was followed in 1906 when the Bishop of Victoria, Hong Kong, was given a spiritual sphere outside that colony.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iii) Anglican Churches in Foreign Countries/321. Churches formed in foreign countries.

321. Churches formed in foreign countries.

In some cases the representatives of existing churches of the Anglican Communion in a foreign country have entered into an agreement for the formation of one church out of the existing bodies¹, but a church so formed has no legal basis beyond that which is derived from the agreement and such sanction as is given by the laws of the particular country.

¹ The Church in Japan was formed on the basis of an agreement between the four English and two American bishops of the Anglican Communion working there and is provided with a constitution and canons and a triennial synod. Similarly the constitution of the Church in China was the result of an agreement between the bishops and representative clergy and laymen of churches of the Anglican Communion in China.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/322. Disestablishment of the Church of England in Wales.

(iv) The Church in Wales

322. Disestablishment of the Church of England in Wales.

The Church of England, so far as it extended to and existed in Wales and Monmouthshire (now known as the Church in Wales), ceased to be established by law on 31st March 1920¹. Since 18th September 1914² no person may be appointed or nominated by the Queen or any person to any ecclesiastical office³ in the Church in Wales by virtue of any right of patronage⁴ existing before disestablishment⁵. On the date of disestablishment all cathedral and ecclesiastical corporations⁶ in the Church in Wales were dissolved⁷. The title and precedence of existing holders of ecclesiastical offices were preserved, but no bishop of the Church in Wales⁸ is as such summoned to sit in the House of Lords⁹. A priest or deacon who holds an ecclesiastical office in the Church in Wales, or whose last ecclesiastical office was in the Church in Wales, may sit in the House of Commons¹⁰. From the date of disestablishment ecclesiastical courts and persons in Wales ceased to exercise jurisdiction, and the ecclesiastical law of the Church in Wales ceased to exist as law¹¹. The bishops and clergy of the Church in Wales ceased to be represented in convocation¹² and are not represented in the General Synod

1 Welsh Church Act 1914, s 1. The date of disestablishment was fixed by the Welsh Church (Temporalities) Act 1919, s 2. Those two Acts, together with the Welsh Church (Amendment) Act 1938 are to be construed as one (see s.2); and these Acts and the Welsh Church (Burial Grounds) Act 1945 (see s 6 (1)), may be cited together as the Welsh Church Acts 1914 to 1945.

2 Ie the date of the passing of the Welsh Church Act 1914.

3 'Ecclesiastical office' means any bishopric, ecclesiastical dignity or preferment within the meaning of the Church Discipline Act 1840, s 2 (repealed by the Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5; see now s 66 (1) (see PARA 1290 note 1 post), and including any lay office in connection with it or in connection with any cathedral corporation: Welsh Church Act 1914, s 38 (1).

4 'Right of patronage' includes any advowson, right of presentation or right of nomination to an ecclesiastical office: *ibid* s 38 (1).

5 *Ibid* s 1.

6 'Cathedral corporation' means any dean and chapter and also any corporation of minor canons, or vicars choral, or any other subordinate corporation of or belonging to or connected with any cathedral or collegiate church in Wales: *ibid.*, s 38 (1).

7 *Ibid* s.2 (1).

8 The province of Wales created by decree of the Archbishop of Canterbury on 1st April 1920 is practically coterminous with Wales with the exception of a few border parishes which fell to be dealt with under the provisions of the Welsh Church Act 1914, s 9, and the Welsh Church (Temporalities) Act 1919, s 8: as to this, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1012. The province comprises six dioceses, namely St Asaph, St David's, Bangor, Llandaff, Monmouth and Swansea and Brecon. The cathedral churches except those of Swansea and St Woolos, Newport, are regulated by the Welsh Cathedral Act 1843, s 2.

9 Welsh Church Act 1914, s 2 (2), (3).

10 *Ibid* s 2 (4).

11 *Ibid* s.3 (1). See, however para 323 post. For the power to establish new ecclesiastical courts, see PARA 324 note 4 post.

12 Ibid s 3 (5).

UPDATE

322 Disestablishment of the Church of England in Wales

TEXT AND NOTES--Decisions of the Provisional Court of the Church in Wales are not susceptible to judicial review: *R v Provisional Court of the Church in Wales, ex p Williams* [1999] 5 ELJ 217.

NOTE 8--1843 Act repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/323. Basis of obligations.

323. Basis of obligations.

As from the date of disestablishment¹ the then existing ecclesiastical law and the then existing rules of the Church of England, with any alterations duly made according to the constitution of the Church in Wales², are binding on members of the Church in Wales on a consensual basis and are capable of being enforced by temporal courts in relation to property held on behalf of the Church in Wales or its members as if the property had been expressly assured upon trust to be held on behalf of persons who should be so bound³.

1 See PARA 322 note 1 ante.

2 See PARA 324 post.

3 Welsh Church Act 1914, s 3 (2). No ecclesiastical person having an existing interest saved by the Act is to be bound by any alteration from which he signifies his dissent in writing within one month, so as to be deprived of that interest: s 3 (2) proviso. See also *Forbes v Eden* (1867) LR 1 Sc & Div 568, HL, and PARA 311 note 5 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/324. Constitution of the Church in Wales.

324. Constitution of the Church in Wales.

The bishops, clergy and laity of the Church in Wales were empowered to hold synods¹ and elect representatives to them, and to frame, either by themselves or by their representatives, constitutions and regulations for the general management and good government of the Church in Wales².

The Constitution of the Church in Wales is set forth in and consists of (1) a number of chapters respectively entitled the Governing Body, which is the supreme legislative body, the Representative Body³, whose functions are administrative and financial, the Diocesan Conference, the Ruridecanal Conference, the Vestry Meeting, Parochial Church Council and the Electoral Roll, Appointments and Patronage, the Election of Bishops, the Election of an Archbishop, Dilapidations, the Courts of the Church in Wales⁴, and Pensions; (2) any further chapter or alteration in any chapter or amendment by the Governing Body; (3) all canons of the Church in Wales; and (4) all rules and regulations made from time to time by or under the authority or with the consent of the Governing Body.

1 'Synod' includes any assembly or convention: Welsh Church Act 1914, s 38 (1).

2 Ibid s 13 (1).

3 As to the establishment of the Representative Body, see PARA 325 post.

4 Under the constitution the courts are called respectively the Archdeacon's Court, the Diocesan Court, the Provincial Court, the Special Provincial Court and the Supreme Court of the Church in Wales. The Supreme Court consists of the Archbishops of Canterbury, York, Armagh and Dublin and the Primus of the Scottish Episcopal Church with four assessors. Under the Welsh Church Act 1914, s 3 (3), it was enacted that the constitution might provide for the establishment of courts for the Church in Wales and, with the consent of the Archbishop of Canterbury, for appeals from any of those courts being heard and determined by the provincial court of the Archbishop (ie the Court of Arches, as to which see PARA 1285 post), but that no appeal should lie from any such court to the judicial Committee of the Privy Council (see PARA 1288 et seq post). The present constitution, however, makes no provision for appeals to the Court of Arches. See further Green, *The Setting of the Constitution of the Church in Wales*.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/325. Vesting of property.

325. Vesting of property.

Under the Welsh Church Act 1914 Welsh Commissioners were appointed¹ and a Representative Body of the Church in Wales was incorporated². As from the date of disestablishment³ there vested in the Welsh Commissioners, subject to the preservation of interests⁴, all Welsh ecclesiastical property⁵ vested in the Ecclesiastical Commissioners or Queen Anne's Bounty⁶; and all property of the Church in Wales not so vested⁷.

The Welsh Commissioners subsequently transferred all the property vested in them, in accordance with the provisions mentioned below. Most of the property, including churches, ecclesiastical residences and chattels held with them, and funds and endowments allocated to work on the fabric of all these, together with all private benefactions, was transferred to the Representative Body⁸. All plate, furniture and other movable chattels belonging to the churches in Wales or used in connection with the celebration of divine worship in them, and not belonging to a private individual, were vested directly in the Representative Body⁹. Tithe rentcharges¹⁰ and other property formerly appropriated to the use of a parochial benefice were transferred to county councils¹¹, and all other remaining property to the University of Wales¹². Property transferred to county councils had to be applied to a charitable or eleemosynary purpose of local or general utility¹³; and property transferred to the University of Wales had to be applied to the benefit of the university and other specified institutions¹⁴.

1 See the Welsh Church Act 1914, s 10 (1). The appointment was made by the Crown (s. 10 (1)), and the commissioners were a body corporate styled 'The Commissioners of Church Temporalities in Wales' with a common seal (s. 10 (2)). The commissioners' powers continued until 31st December 1947 and then, when they had wound up their affairs, the commissioners were dissolved: see s 10 (7); Welsh Church (Temporalities) Act 1919, s 1; Order in Council dated 29th November 1946, S.R. & O. 1946 No. 2081.

2 See the Welsh Church Act 1914, s 13 (1), and PARA 324 ante. Upon the appointment of representatives the Crown by charter incorporated the Representative Body under s 13 (2): see Order in Council dated 15th April 1919, S.R. & O. 1919 No. 564. A grant of arms was made to the Representative Body by Earl Marshal's warrant dated 9th December 1954, providing inter alia that the flag proper to be flown on any church in Wales is argent on a cross azure a celtic a cross or: see PARA 969 post.

3 See PARA 322 note 1 ante.

4 See the Welsh Church Act 1914, s 4 (1), which provides that the vesting was subject to all tenancies, charges and incumbrances, and all rights and interests saved by that Act, affecting the property.

5 See *ibid* s 5, Schs. 1, 2. 'Property' includes real and personal property, things in action and rights in action: see s 38 (1).

6 *Ibid* s 4 (1) (a). The Ecclesiastical Commissioners and Queen Anne's Bounty have now been dissolved and their functions and property transferred to the Church Commissioners: Church Commissioners Measure 1947, ss 1, 2; see PARA 363 post. Subject to certain exceptions, the Church Commissioners have no power or liability to make payments for any ecclesiastical purpose in or connected with the Church in Wales: Welsh Church Act 1914, s 6, Sch. 3; Welsh Church (Temporalities) Act 1919, s 5.

7 See the Welsh Church Act 1914, s 4 (1) (b).

8 *Ibid* s 8 (1) (a).

9 *Ibid* s 4 (2).

10 *Ibid* s 8 (1) (c).

11 *Ibid* s 8 (1) (d).

12 Ibid s 8 (1) (e).

13 Ibid s 19 (1) (a). As to the vesting of property subject to the provisions of s 19, following the reorganisation of local government, see the Local Government Act 1972, s 211.

14 Welsh Church Act 1914, s 19 (1) (b); Welsh Church (Amendment) Act 1938, s 1.

UPDATE

325 Vesting of property

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--1914 Act s 10, 1919 Act s 1 repealed: Statute Law (Repeals) Act 2004.

NOTE 6--1914 Act s 6 further amended, Sch 3 repealed; 1919 Act s 5 repealed: 2004 Act.

TEXT AND NOTE 9--1914 Act s 4(2) repealed: 2004 Act.

NOTES 13, 14--1914 Act s 19(1) amended: Local Government (Wales) Act 1994 s 66(6), Sch 16 para 6.

NOTE 13--As to the county councils which are to hold such property, and the allocation of it, in consequence of the reorganisation of local government in Wales, see the Welsh Church Act Funds (Designation and Specification) Order 1996, SI 1996/344.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/326. Liability for chancel repairs.

326. Liability for chancel repairs.

The Welsh Church Act 1914 did not affect any liability to pay tithe rentcharge or the liability of any lay impropriator of any tithe rentcharge to repair any ecclesiastical building, but a county council was not by reason of being entitled to or receiving any tithe rentcharge under the Act to be liable for the repair of any ecclesiastical building¹. At the date of disestablishment² a tithe rentcharge belonging to a spiritual rector of a parish in Wales vested in the Welsh Commissioners³, and was eventually transferred to the council of the county where the land out of which the tithe rentcharge issued was situate⁴. While the rentcharge was vested in the Welsh Commissioners they did not become liable on that account for chancel repairs⁵. Tithe rentcharge in Wales which belonged to the Ecclesiastical Commissioners⁶ or Queen Anne's Bounty and was for the purposes of the Act⁷ deemed to be Welsh ecclesiastical property vested in the Welsh Commissioners on disestablishment⁸, but had ultimately to be transferred to the University of Wales⁹. The university, as owner of this tithe rentcharge, would have become liable for chancel repairs if the tithe rentcharge had not been extinguished before the transfer was made¹⁰. Accordingly the Welsh Commissioners, while the rentcharge was vested in them, were liable for chancel repairs¹¹.

It has not yet been finally decided whether liability for the repair of the chancels of churches in the province of Wales, which attached to the ownership of rectorial property other than tithe rentcharge, ceased at the date of disestablishment by reason of the fact that from that date ecclesiastical courts in Wales ceased to exercise jurisdiction and the ecclesiastical law of the Church in Wales ceased to exist as law¹², but it seems that liability in these cases is not affected by the Welsh Church Act 1914 and continues¹³.

1 Welsh Church Act 1914, s 28 (1). As to the enforcement of the liability of a lay impropriator at the instance of the Representative Body, see s 28 (2).

2 See PARA 322 note 1 ante.

3 Welsh Church Act 1914, s 4 (1) (b); see PARA 325 ante.

4 Ibid s 8 (1) (c).

5 *Welsh Church Comrs v Representative Body of the Church in Wales* [1940] Ch 607, [1940] 3 All ER 1, CA. The decision of the Court of Appeal in this case, but not the reasons given for it, was approved by Viscount Simon and Lord Wright in *Representative Body of the Church in Wales v Tithe Redemption Commission* [1944] AC 228 at 243, and at 246, 247, respectively, [1944] 1 All ER 710 at 715, and at 717, respectively, HL.

6 Welsh ecclesiastical property acquired by the Welsh Commissioners from the Ecclesiastical Commissioners included tithe rentcharge acquired by the Ecclesiastical Commissioners which had formerly formed part of the endowments of the Welsh bishoprics and the deans and chapters of the Welsh cathedrals.

7 See the Welsh Church Act 1914, s 5 (1), (2), Schs. 1, 2.

8 Ibid s 4 (1) (a).

9 Ibid s 8 (1) (e).

10 As to extinguishment of tithe rentcharge under the Tithe Act 1936, see PARA 1213 post.

11 *Representative Body of the Church in Wales v Tithe Redemption Commission* [1944] AC 228, [1944] 1 All ER 710, HL; Tithe Act 1936, s 31, Sch. 7.

12 See PARA 322 ante.

13 See the opinions of Viscount Simon LTC and Lord Wright in *Representative Body of the Church in Wales v Tithe Redemption Commission* [1944] AC 228 at 239, 240, and at 245 and 247, respectively, [1944] 1 All ER 710 at 713, and at 716 and 717, respectively, HL, where the view was expressed that the liability to repair a chancel was imposed by the common law and did not depend solely on ecclesiastical law. It is submitted that this view (which was not the ground on which the case was decided) is correct. There is considerable authority that the liability had its origin in the ancient custom of the realm: see *Pense v Prouse* (1695) 1 Ld Raym 59; *Smallbones v Edney* (1870) LR 3 PC 444 at 450, per Lord Penzance; *Griffin v Dighton* (1863) 33 LJQB 29 at 31, per Cockburn CJ (affd. Without affecting this point (1864) 5 B & S 93, Ex Ch); see also *Chivers & Sons Ltd v Secretary of State for air* [1955] Ch 585 at 595, [1955] 2 All ER 607 at 610, per Wynn-Parry J.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/327. Interests existing at the date of disestablishment.

327. Interests existing at the date of disestablishment.

Any person who held an ecclesiastical office¹ on 18th September 1914² retained his interest in the emoluments of the office so long as he held it or any other ecclesiastical office in the Church in Wales to Which he might thereafter be nominated or appointed³. Any such person nominated or appointed to any ecclesiastical office in the Church in Wales, other than that which he held on that date, had to pay over the net income⁴ of the ecclesiastical office held by him on that date to the Representative Body⁵. On any such person ceasing for six months to hold any ecclesiastical office in the Church in Wales his interest determined⁶, but he might receive an annuity, if he resigned his office on the ground of incapacity⁷. The holder of an ecclesiastical office might not receive emoluments of his office whilst he was suspended by order of a court of competent jurisdiction from exercising the spiritual functions of that office⁸. Compensation was payable to lay patrons⁹ and lay holders of freehold offices¹⁰.

1 For the meaning of 'ecclesiastical office', see PARA 322 note 3 ante.

2 ie the date of the passing of the Welsh Church Act 1914.

3 Ibid s 14 (1).

4 As to the meaning of 'net income', see ibid s 14 (4).

5 Ibid s 14 (1) proviso (a).

6 Ibid s 14 (2).

7 Ibid s 14 (2) proviso.

8 Ibid s 14 (8).

9 Ibid s 16.

10 Ibid s 17.

UPDATE

327 Interests existing at the date of disestablishment

TEXT AND NOTES--1914 Act ss 14, 16, 17 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/328. Vestries and churchwardens.

328. Vestries and churchwardens.

The powers, duties and liabilities of the vestries of parishes in boroughs or urban districts were transferred to the councils of boroughs and urban districts in Wales and Monmouthshire except insofar as they related to the affairs of the church or to ecclesiastical charities¹. There were similarly transferred the powers, duties and liabilities of the churchwardens of every such parish except insofar as they related to the affairs of the church or to charities or were powers and duties of overseers².

1 Welsh Church Act 1914, s 25 (1) (a). Upon the reorganisation of local government on 1st April 1974 the powers, duties and liabilities of boroughs and urban districts in Wales and Monmouthshire were transferred to districts in Wales: see the Local Government Act 1972, ss 20, 179 (3).

2 Welsh Church Act 1914, s 25 (1) (b). As to the transfer of powers of overseers, see CHARITIES vol 8 (2010) PARA 256.

UPDATE

328 Vestries and churchwardens

NOTE 1--Local Government Act 1972 s 20 substituted by Local Government (Wales) Act 1994 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARA 37).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/329. Trusts, first fruits and tenths.

329. Trusts, first fruits and tenths.

Trusts affecting property held in trust for charitable purposes by cathedrals or ecclesiastical corporations which were dissolved on disestablishment continued to attach to the property¹. Where ecclesiastical persons² were immediately before the date of disestablishment³ acting as trustees in right of their offices, they were succeeded as such trustees by the persons (if any) who might thereafter at any time discharge duties similar or analogous to those discharged by those ecclesiastical persons⁴.

As from the date of disestablishment, first fruits in respect of any subsequent appointment to any ecclesiastical office in the Church in Wales and tenths in respect of those offices ceased to be payable⁵.

1 Welsh Church Act 1914, s 22 (1).

2 'Ecclesiastical person' means a bishop and the holder of any ecclesiastical office who is in holy orders: *ibid* s 38 (1). For the meaning of 'ecclesiastical office', see PARA 322 note 3 ante.

3 As to the date of disestablishment, see PARA 322 note 1 ante.

4 Welsh Church Act 1914, s 22 (2).

5 *Ibid* s 20.

UPDATE

329 Trusts, first fruits and tenths

TEXT AND NOTES 1, 5--1914 Act ss 20, 22(1) repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/330. Marriages in churches.

330. Marriages in churches.

No change was made in the law with respect to marriages in Wales, or in the right of bishops of the Church in Wales to license churches for the solemnisation of marriages or to grant licences to marry¹.

A church building shared² by the Church in Wales³ under a sharing agreement may be registered⁴ for the solemnisation of non-Anglican marriages⁵. It may also be used for the publication of banns and the solemnisation of Anglican marriages⁶.

1 Welsh Church (Temporalities) Act 1919, s 6. In *Powell v Representative Body of the Church in Wales* [1957] 1 All ER 400, [1957] 1 WLR 439 it was held that the authority of the Rector of Hawarden to grant (concurrently with the Bishop of St Asaph) marriage licences within the ancient parish of Hawarden, being an authority which existed at the date of the disestablishment of the Church in Wales (ie 31st March 1920), although abolished by the Welsh Church Act 1914, s 23, had been restored on the repeal of s 23 by the Welsh Church (Temporalities) Act 1919, s 6.

2 Ie under the provisions of the Sharing of Church Buildings Act 1969, s 1 (1): see PARA 1186 post.

3 Ibid s 6 (5), applies the provisions of s 6 to the Church in Wales as they apply to the Church of England.

4 Ie under the Marriage Act 1949, ss 41-44; Sharing of Church Buildings Act 1969, s 6 (1), Sch. 1. See PARA 1191 post.

5 Ibid s 6 (1).

6 Ibid s 6 (2). Similar provisions are made for chapels of cathedrals and various institutions which, although not the subject of a sharing agreement, are used for public worship in accordance with the forms of service and practice of two or more churches: s 6 (4). See PARA 1412 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(2) THE ANGLICAN COMMUNION/(iv) The Church in Wales/331. Construction of references in documents.

331. Construction of references in documents.

In all enactments, deeds and other documents in which mention is made of the Church of England, the enactments and provisions relating to it are to be construed as including the Church in Wales, but as to that church subject to the provisions of the Welsh Church Act 1914¹.

¹ Welsh Church Act 1914, s 38 (3). Where, by any charter, deed or other document any association, institution or society is empowered or is under a duty to make any grant or payment to any persons or body of persons, whether corporate or unincorporate, in Wales, that power or duty is not affected by reason of any parish of the Church in Wales ceasing to be a part of the province of Canterbury or York, notwithstanding anything contained in any such charter, deed or document: Welsh Church (Temporalities) Act 1919, s 7 (2). Children of clergymen in Wales ordained both before or after the Welsh Church Act 1914 were held entitled to be admitted to the benefits of a charity incorporated by Act of Parliament in 1809 for the benefit of orphans of clergymen of the established church: *Re Clergy Orphan Corp'n Trusts, Clergy Orphan Corp'n v Christopher* [1933] 1 Ch 267; and cf. *Re Friend of the Clergy's Charters, Friend of the Clergy v A-G* [1921] 1 Ch 409; and PARA 311 note 5 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/332. Formation of churches.

(3) FORMATION AND PROTECTION OF CHURCHES

(i) Formation and Identity of Churches

332. Formation of churches.

A church which has not derived its tenets and organisation by cleavage from a pre-existing church, or a part of a church already existing, may be formed into a separate church in one of three ways.

First, it may be formed by a direct act of the civil power imposing on individuals the expression of religious beliefs in some common form¹, or creating an organisation for the association of persons on the basis of religious beliefs expressed in some common form². A church so formed may be extended, or two or more churches formed on the basis of the same religious beliefs may be united to any extent within the jurisdiction of the civil power³.

Secondly, it may be formed by the voluntary association of individuals⁴, or the voluntary provision by individuals of an organisation for association on the basis of religious beliefs expressed in some common form⁵. A church so formed may be extended to any extent permitted by its system of organisation⁶, either by the voluntary association of other individuals conscientiously in agreement with it⁷, or by the union with it of other churches organised on the basis of the same religious beliefs, or capable by the exercise in good faith of powers provided for that purpose of being altered so as to be expressed in forms which are not essentially different; or may be divided to any extent consistent with its system of organisation by the secession of individuals⁸ or groups of individuals, characterised by some additional expression relating to their religious beliefs, or by the exercise in good faith of powers provided for that purpose⁹.

Thirdly, it may be formed by a combination of these methods.

1 Many statutes (eg the Act of Uniformity 1551, s 1 (repealed); the Act of Uniformity 1558 (repealed); 23 Eliz 1. c. 1 (Religion) (1580-81) (repealed); 29 Eliz. 1 c. 6 (Religion) (1586-87) (repealed) imposed directly on every person not dissenting from the doctrines of the Church of England and attending some other place of worship, the duty of attending his parish church or chapel. See also *Britton v Standish* (1704) Holt KB 141; *Marshall v Graham* [1907] 2 KB 112. As to the duty to observe Sundays and other special days, see the Revised Canons Ecclesiastical, Canon B6, and PARA 950 post; as to the duty to communicate regularly, see Canon B15 para 1, and PARA 979 post.

2 As to the Crown's power in overseas ecclesiastical affairs, see PARAS 315-317 ante.

3 See PARA 348, text and notes 8-10 post.

4 A Christian church may consist of a voluntary and unincorporated association of Christians united on the basis of agreement in certain religious tenets and principles of worship, discipline and church government: *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 643, HL.

5 *A-G v Pearson* (1817) 3 Mer 353.

6 The appeals in *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515, HL, were based upon the ground that the union of the Free Church and the United Presbyterian Church could not be legally effected consistently with the constitutions and standards of the Free Church. If, as was held to be the case, the General Assemblies had no power to relax the fetters which bound the Free Church from its birth, then those appeals were bound to succeed.

7 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 616, HL, per Lord Halsbury LC, citing *Dill v Watson* (1836) 2 Jo Ex Ir 48 at 91.

8 Any individual member of a church is free to secede from his membership of the church, subject to the fulfilment of any contractual obligations which he may have entered into in relation to his membership (*General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 626, HL, Lord Halsbury LC); but the change of faith must be genuine, and if it is fraudulent and colourable it will be null and void so far as any legal consequences are concerned (*Swift v Swift* (1833) 3 Knapp 303 at 331).

9 A sect may erect any point or any punctilio into an article of faith (*General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 636, HL) and, if by so doing it differentiates itself from the parent church, it loses all right to share in the property of that parent church (*General Assembly of Free Church of Scotland v Lord Overtoun* supra; *A-G v Pearson* (1817) 3 Mer 353; *Craigdallie v Aikman* (1820) 1 Dow 1 HL; *Foley v Wontner* (1820) 2 Jac & W 245), and is entitled to avail itself as a separate church of all the facilities which the state provides. Where the alteration on the basis of which separation takes place involves a contradiction in some material particular of the accepted expression of the doctrine of the church, the sect separated off automatically ceases to form part of the church, or to have any right to share in the property held in trust for it unless the case of a schism has been expressly provided for in the instrument of foundation: *Craigdallie v Aikman* supra at 16.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/333. Identity of churches.

333. Identity of churches.

The forms in which religious beliefs are expressed as the basis of association in a church are called doctrines, creeds, confessions, formularies or tests, and the identity of a religious community described as a church is determined by reference to its principles or standards as so expressed¹.

¹ Generally, the identity of a religious community described as a church must consist in the unity of its doctrines: *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 612, HL, per Lord Halsbury LC.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/334. Establishment of churches.

334. Establishment of churches.

The word 'established' in relation to a church is used in various senses. In one sense every religious body recognised by the law, and protected in the ownership of its property and other rights may be said to be by law established¹. In another sense the words 'established church' are used to mean the church as by law established in any country as the public or state-recognised form of religion². The process of establishment means that the state has accepted the church as the religious body which in its opinion truly teaches the Christian faith, and has given to it a certain legal position and to its decrees, if given under certain legal conditions, certain legal sanctions³. What is called the 'establishment' principle in relation to the church is the principle that there is a duty on the civil power to give support and assistance to the church⁴, though not necessarily by way of endowment⁵, and where this principle prevails a church is said to be established when it receives such support and assistance. In the fullest sense a church is said to be established when all the provisions constituting the church's system or organisation receive the sanction of a law which established that system throughout the state and excludes any other system⁶. The Church of England is established by law in England⁷.

1 *A-G v Pearson* (1817) 3 Mer 353 at 376. In *Harrison v Evans* (1767) 3 Bro Parl Cas 465, HL, Lord Mansfield CJ said of the dissenters' way of worship that, being permitted and allowed by the Toleration Act, 'it is established': Furneaux's Letters to Blackstone (2nd Edn) 265; see also *R v Barker* (1762) 1 Wm Bl 352.

2 Oxford English Dictionary, 'Church'. See also the Report of the Archbishops' Commission on Church and State (CIO 1970) 1.

3 *Marshall v Graham* [1907] 2 KB 112 at 126, DC.

4 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515, HL.

5 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 680, HL.

6 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 726, HL. Thus the Union with Scotland Act 1706, s 2, pursuant to the Articles of Union, included an Act for securing the protestant religion and Presbyterian church government within the Kingdom of Scotland.

7 See the Revised Canons Ecclesiastical, Canon A1, and PARA 345 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/335. Alteration of doctrine.

335. Alteration of doctrine.

The system of organisation of a church may include provisions for the alteration of the outward expression of the fundamental doctrines by which it is identified¹, and where those provisions exist the alteration may be made within the scope of those provisions without affecting the church's identity; but where the state has by legislative acts established² a church identified by certain doctrines, that church cannot, while retaining the benefit of establishment, exercise any power of altering those doctrines without the legislative sanction of the state³.

1 Thus, the Preface of the Book of Common Prayer and Articles of Religion 34 recognise that the particular form of divine worship and the rites and ceremonies appointed to be used in the public liturgy of the Church of England may be changed or altered in certain circumstances. For the power of the General Synod of the Church of England by canon to approve, amend, continue or discontinue forms of service, see the Church of England (Worship and Doctrine) Measure 1974, s 1 (1), and PARA 935 post.

2 As to establishment, see PARA 334 ante.

3 An unestablished religion is free from state control as regards doctrine, government and discipline, and that freedom differentiates a voluntary association from an established church: *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 648, HL. Cf. *R v Dibdin* [1910] P 57, CA; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/336. Union of churches.

336. Union of churches.

Churches whose fundamental doctrines do not differ¹ may unite without losing their respective identities, provided that the alterations of organisation which are required for their union are within the scope of the provisions for alteration contained in their respective systems of organisation², that the powers of making the alterations are exercised in good faith, and that the legislative sanction, if any, required for those alterations is obtained³. Without uniting those churches may enter into mutual agreements for intercommunion, and can therein provide for the recognition by each of the duly constituted officers and recognised members of the other church insofar as those officers and members comply with the conditions regarded by both churches as essential⁴.

1 See *Merriman v Williams* (1882) 7 App Cas 484 at 507, PC; also paras 313, 314 ante.

2 As to the restrictions on the approval by the General Synod of a scheme for a constitutional union or a permanent and substantial change of relationship between the Church of England and another Christian body, see the Synodical Government Measure 1969, s 2, Sch. 2 para 8 (1); Synodical Government (Amendment) Measure 1974, s 2 (1); see also PARA 405 post.

3 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 628, HL.

4 See *A-G v Shore* (1843) 11 Sim 592 at 613, per Shadwell V-C; but it is difficult to reconcile this with the declaration subsequently made by Shadwell V-C in *A-G v Wilson* (1848) 16 Sim 210 at 220n, distinguishing between orthodox dissenting churches which were, and which were not, connected with the Kirk of Scotland or the Secession Church, and restricting participation in the benefits of a charity to ministers of those churches which were not so connected.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(i) Formation and Identity of Churches/337. Legal recognition of churches.

337. Legal recognition of churches.

When a dispute in reference to any particular church arises before any tribunal which is competent to decide it, any relevant question as to the identity of the church (that is as to its principles or standards as expressed in its doctrines, creeds, formularies, confessions and tests, and the power, if any, to alter such expression) is to be determined by that tribunal, subject to any relevant legislative provisions, like any other question of fact¹.

The courts of law may by legislative or other action of the civil power be given particular powers and duties in reference to any questions arising in relation to particular churches. Save insofar as the particular powers and duties extend, all religious bodies are regarded by the courts of law as in the same position in respect of the protection of their rights and the sanction given to their respective organisations². Their endowments and any other rights which they may possess will be equally enforced by the law, and any rules they may adopt for enforcing discipline within their body will be binding on those who expressly or by implication have assented to them³.

1 *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 645, HL.

2 *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411 at 461; *Brown v Curé etc of Montreal* (1874) LR 6 PC 157.

3 The positive laws which inflicted penalties for non-conformity to the rites of the Church of England having been repealed, the courts have felt bound to recognise the right of anyone, not only to secede from that church, but also to form religious institutions of their own, and have undertaken to enforce the execution of trusts for such institutions so long as they do not contravene any other positive laws relating to them: 2 Burn's Ecclesiastical Law (4th Edn) 206; *Davis v Jenkins* (1814) 3 Ves & B 151 at 158.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(ii) Discipline and Liberty/338. Discipline.

(ii) Discipline and Liberty

338. Discipline.

The discipline of a church cannot affect any person except by the express sanction of the civil power¹ or by the voluntary submission of the particular person², but, for the purpose of enforcing discipline within a church, any religious body may constitute a tribunal to determine whether its rules have been violated by any of the members or not and what shall be the consequence of such violation. The tribunal's decision will be binding and will be enforced by the courts of law when the tribunal has acted within the scope of its authority, has observed such forms as the rules require, if any forms are prescribed, and, if not, has proceeded in a manner consonant with the principles of justice³; but if any member of such a body has been injured as to his rights in any matter of a mixed spiritual and temporal character the courts of law will, on due complaint being made, inquire into the laws and rules of the tribunal or authority which has inflicted the injury, and will ascertain whether any sentence pronounced was regularly pronounced by competent authority, and will give such redress as justice demands⁴.

1 See PARA 339 et seq post.

2 *Middleton v Crofts* (1736) 2 Atk 650 at 669. Cf. *R v Dibdin* [1910] P 57, CA; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL. In regard to the Church of England the statement in the text must be considered in relation to the disciplinary powers which have been conferred on the ecclesiastical courts, for example the power of enforcing the discipline of the clergy. This jurisdiction is discussed in PARA 1350 et seq post.

3 *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411 at 461.

4 *Murray v Burgess* (1866) LR 1 PC 362; *Brown v Cure etc of Montreal* (1874) LR 6 PC 157.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(ii) Discipline and Liberty/339. Liberty of conscience.

339. Liberty of conscience.

The civil power, while exercising complete control over all estates and degrees, whether ecclesiastical or temporal, and affording all necessary protection from wrongful acts¹, refrains from exercising any purely spiritual functions², and, save insofar as positive law may otherwise provide, recognises and has always recognised the right of all to follow the dictates of their consciences in the religious opinions which they hold³.

1 All dissenters from the established church had a right to the protection of the Court of Queen's Bench if interrupted in their decent and quiet devotions before they were expressly protected by the Acts against brawling: *R v Wroughton* (1765) 3 Burr 1683.

2 Articles of Religion, 37.

3 There never was a single instance from the Saxon times down to our own in which a man was ever punished for erroneous opinions concerning rites or modes of worship, but upon some positive law: *Evans v London Chamberlain* (1767) 2 Burn's Ecclesiastical Law (8th Edn) 207 at 218, HL, per Lord Mansfield CJ; also reported, but not at length, sub nom. *Harrison v Evans* (1767) 3 Bro Parl Cas 465, HL. Cf. *R v Dibdin* [1910] P 57 at 132, 133, CA, per Farwell LJ; affd., but not on this point in particular, sub nom. *Thompson v Dibdin* [1912] AC 533, HL.

As to the effects of the various enactments emancipating particular religious bodies from penalties and tests, see PARA 1387 post; speaking generally, their effect has been to abrogate all positive laws which formerly qualified the right, referred to in the text, of all to follow the dictates of their consciences in the religious opinions which they hold.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(ii) Discipline and Liberty/340. Facilities provided by the state.

340. Facilities provided by the state.

The sanction thus accorded has been reinforced in England by statutory enactments which have afforded exceptional assistance and protection to religious bodies in relation to their formation and endowment and the exercise of their religious rites. Thus, in addition to the enactments which relate to the Church of England, or to other religious bodies in particular, there are enactments providing generally for liberty of religious worship¹, registration and user of places of religious worship², protection of religious worship³, and tenure of property held for the benefit of any religious body⁴.

1 See PARA 341 post.

2 See PARA 342 post.

3 These relate to obstruction and similar offences, as to which see PARAS 1408, 1050 post.

4 See PARAS 343, 344 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(ii) Discipline and Liberty/341. Liberty of religious worship.

341. Liberty of religious worship.

The Liberty of Religious Worship Act 1855 provides that the then existing enactments by which no congregation or assembly for religious worship at which there should be present more than twenty persons (besides the immediate family and servants of the person in whose house or upon whose premises the meeting, congregation or assembly was held) was permitted until the place of meeting was certified¹ should not apply to any congregation or assembly for religious worship held in any parish by or by the authority of the incumbent or, if the incumbent is not resident, by the curate, or to any congregation or assembly for religious worship meeting in a private dwelling house or on the premises belonging to it, or meeting occasionally in any building or buildings not usually appropriated to purposes of religious worship².

Provision has also been made allowing the performance at burials of such Christian and orderly religious service conducted by such person or persons as the person having the charge of or responsible for the burial thinks fit³; and for the performance of any such orderly religious service used by any church, denomination or person professing to be Christian as the person having the charge of or being responsible for the burial thinks fit⁴; and for the provisions and maintenance of denominational chapels for funeral services⁵.

Provision has also been made in respect of religious services at marriages performed in any building registered as places of religious worship and registered for the solemnisation of marriages⁶.

1 See the Toleration Act 1688, s 19 (repealed); and the Places of Religious Worship Act 1812, s 2, extended to Roman Catholics and Jews by the Roman Catholic Charities Act 1832 and the Religious Disabilities Act 1846, referred to in the Liberty of Religious Worship Act 1855, s 2.

2 Ibid s 1.

3 See the Local Authorities' Cemeteries Order 1974, S.I. 1974 No. 628, art. 5 (5), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1080. See also the Cemeteries Clauses Act 1847, s 36, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1031.

4 See the Burial Laws Amendment Act 1880, s 6, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1085.

5 See the Local Authorities' Cemeteries Order 1974, arts. 2 (4), 6 (1) (b), (3), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1032.

6 See the Marriage Act 1949, s 44, and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 104 et seq. As to registration, see PARA 342 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(ii) Discipline and Liberty/342. Registration of places of worship.

342. Registration of places of worship.

Any place of meeting for religious worship of any body or denomination of persons other than the Church of England may be certified in writing to the Registrar General for England and Wales¹ by any person, and is thereupon registered² as a place of meeting for religious worship by a congregation or assembly of persons, who may be described by any religious appellation adopted by the persons on whose behalf the building is certified or, if they object to describe themselves by any appellation, may be described as persons who object to be designated by any distinctive religious appellation³.

1 As to the Registrar General, see the Registration Service Act 1953, s 1. He was formerly known as the Registrar General of Births, Deaths and Marriages in England.

2 Before registering a place that has been certified in writing, the Registrar General must satisfy himself that is in fact a place of meeting for religious worship: *R v Registrar General, ex parte Segerdal* [1970] 2 QB 697, [1970] 3 All ER 886, CA. See also PARA 302 note 3 ante.

3 Places of Worship Registration Act 1855, s 2, and see PARA 1410 post. For the form of certificate, see Sch. A.

UPDATE

342 Registration of places of worship

NOTE 1--As to the Registrar General see further REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARAS 605, 606.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(iii) Property/343. Endowments.

(iii) Property

343. Endowments.

So far as the endowments of religious bodies are concerned, in the absence of any special provisions affecting a particular church, the courts will administer the ordinary law relating to charitable trusts¹, but will, in construing the trust deeds relating to property owned for the benefit of a church, look at them as part and parcel of the whole machinery by which the particular church is kept together and carried on².

¹ *Shore v Wilson* (1842) 9 Cl & Fin 355, HL; *Drummond v A-G* (1849) 2 HL Cas 837; *A-G v Hutton* (1844) Drury *temp* Sug 480; and see CHARITIES vol 8 (2010) PARA 113 et seq.

² *Dr Warren's Case* (1835) Grindrod's Compendium (8th Edn) 371 at 373, 376, approved in *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411 at 462.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/1. INTRODUCTION/(3) FORMATION AND PROTECTION OF CHURCHES/(iii) Property/344. Tenure of property.

344. Tenure of property.

Any religious body recognised by law is protected in the enjoyment of its endowments¹, and it is the duty of a court of justice to give effect to the intent of the founder of any charity for the benefit of such a body, so far as can be done without infringing any known rule of law². Where the charity's instrument of foundation uses phraseology which leaves that intent in doubt, extrinsic evidence is admissible to prove the existence of a religious body by which that phraseology is used, the manner in which it is used, and the fact that the founder is or was a member of that body³. Facilities were provided⁴ for conveying or assuring property acquired by, or by trustees in connection with, any congregation or society or body of persons⁵ associated for religious purposes, so that the conveyance or assurance might vest the estate not only in the parties named as trustees but also in their successors in office for the time being⁶. Trustees holding a leasehold interest in premises held upon trust to be used for the purposes of a place of worship may acquire the freehold⁷.

1 The effect of the Toleration Act 1688 (repealed) was to render the practice of their religion by nonconformists within the limits prescribed by that Act not only permissible but lawful (2 Burn's Ecclesiastical Law (4th Edn) 190-206), and to afford the protection of the law to the various types of religion which were practised by those who did not conform to the Church of England: *A-G v Pearson* (1817) 3 Mer 353.

2 *A-G v Pearson* (1817) 3 Mer 353.

3 *Shore v Wilson* (1842) 9 Cl & Fin 355, HL. See also CHARITIES vol 8 (2010) PARA 116.

4 Trustees Appointment Act 1890, s 2 (repealed).

5 Such body of persons might have comprised several congregations or other sections or divisions or component parts (*ibid* s 2 (repealed)); but it should have been made clear in the trust deed whether the particular property was for the benefit of a component part or for the whole body (*Re Hoghton Chapel* (1854) 23 LTOS 268).

6 Trustee Appointment Act 1850; Trustee Appointment Act 1869; Trustee Appointment Act 1890, s 2 (all repealed); see PARA 1416 post.

7 Places of Worship (Enfranchisement) Act 1920, s 1: see PARA 1417 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/345. Meaning of 'the Church of England'.

2. THE CONSTITUTION OF THE CHURCH OF ENGLAND

(1) CONSTITUTIONAL STATUS

345. Meaning of 'the Church of England'.

The Church of England, established according to the laws of the realm under the Queen's Majesty, is declared to belong to the true and apostolic Church of Christ¹, being regarded as the branch of the Church which was founded in England when the English were gradually converted to Christianity between the years 597 and 687². It contains the two provinces of Canterbury and York. The expression 'England' in this connection includes the town of Berwick-upon-Tweed, but not any part of England or Wales to which the Welsh Church Act 1914 applies³. The Church of England has bishops and ecclesiastical organisations in certain foreign parts⁴.

1 Revised Canons Ecclesiastical, Canon A1. See also Articles of Religion 19 (in the Book of Common Prayer) where the visible Church of Christ is described as 'a congregation of faithful men, in the which the pure Word of God is preached, and the Sacraments be duly administered according to Christ's ordinance in all those things that of necessity are requisite to the same'; and cf. the opening words of the bidding prayer in Revised Canons Ecclesiastical, Canon B19 (amended by Amending Canon No. 1): 'Ye shall pray for Christ's holy Catholic Church, that is, for the whole congregation of Christian people dispersed throughout the whole world, and especially for the Church of England'.

2 The accepted legal doctrine is that the Church of England is a continuous body from its earliest establishment in Saxon times: *Marshall v Graham* [1907] 2 KB 112 at 126, DC. When the statutes to exclude papal jurisdiction were passed in the reign of Henry VIII (see PARA 347 post), the Church of England was regarded as an existing church and there was no intention to vary from the congregation of Christ's Church, but the papal authority in England was regarded as a usurpation: see eg the Ecclesiastical Licences Act 1533, ss 2 (repealed), 13. Cf. 25 Edw. 3, stat 4 (Statutes of Provisors of Benefices) (1350-51) (repealed), which together with other Acts passed in the latter half of the fourteenth century challenged the authority of the Pope. See also PARA 311 ante.

3 Interpretation Measure 1925, s 2 proviso (a). The Welsh Church Act 1914 applies to Wales, to what before the Local Government Act 1972 was Monmouthshire, and to some parishes straddling the border: see ss 1, 9, and PARA 322 note 8 ante. As to the Church in Wales, see PARA 322 et seq ante. The Channel Islands form part of the diocese of Winchester and are represented in the diocesan synod of that diocese and in the House of Laity of the General Synod: see PARAS 388, 421 post. As to the application of Measures of the General Synod to the Channel Islands, see PARA 402 post. The diocese of Sodor and Man forms part of the province of York and sends representatives to the General Synod: see PARAS 388, 456 post.

4 See PARA 318 et seq ante. The introduction of English law into a colony does not carry with it English ecclesiastical law and in the colonies the Church of England is not part of the constitution. See also PARA 315 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/346. The church as an aggregate of individuals and an institution.

346. The church as an aggregate of individuals and an institution.

The Church of England as defined in the previous paragraph may be considered as an aggregate of individuals¹. This aggregate evades easy definition or description, but in its widest sense membership of it may be taken to include baptised persons giving general allegiance to the ordinances and liturgy of the Church of England as by law established and not owing allegiance to a religious body whose tenets are inconsistent with those of the established Church².

The church may also be considered as an organised operative institution, although the Church of England as such is not a corporation. For the purpose of setting forth the constitution of the Church of England as by law established the church is necessarily to be regarded in the latter sense, as an organised institution; and the constitution to be considered consists of those ordinances, authorities and provisions on which its operations are based which are judicially recognised by the courts of law³. The ordinances and provisions thus judicially recognised include all such canons and constitutions ecclesiastical, however ancient, as have been and are allowed by general consent and custom within the realm, and the authorities thus judicially recognised include offices and ecclesiastical courts which have had a continuous existence, in many cases, from the time of the Conquest⁴.

1 See PARA 302 ante. The church is not the church of the clergy or of the laity, but of both. It consists of the lay as well as the clerical members of the community: *R v Dibdin* [1910] P 57 at 136, CA, per Farwell LJ; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL.

2 A person who has been baptised, has been confirmed or is ready and desirous to be confirmed, and is an actual communicant in the Church of England, holds the status of a member of that church, and would be ordinarily regarded and spoken of as such (*Re Perry Almshouses* [1898] 1 Ch 391 at 400, per Stirling J; on appeal sub nom. *Re Perry Almshouses, Re Ross' Charity* [1899] 1 Ch 21, CA; approved by Sir Raymond Evershed MR in *Re Allen, Faith v Allen* [1953] Ch 810 at 818, [1953] 2 All ER 898 at 902, CA (cases on gifts of property)), even though he does not attend church regularly (*Marshall v Graham* [1907] 2 KB 112 at 124, DC). For the meaning of 'member of the Church of England' in a will, see *Re Allen, Faith v Allen* supra. For the meaning of 'actual communicant member of the Church of England' in certain enactments, see PARA 420 note 1, and PARA 543 note 5 post. Baptism or conditional baptism constitutes reception into the Church of England: see the Revised Canons Ecclesiastical, Canon B28 para 1. As to the obligation upon a person who has been confirmed to communicate, see PARA 979 post.

3 See PARA 301 ante, and *Mackonochie v Lord Penzance* (1881) 6 App Cas 424, HL.

4 *Martin v Mackonochie* (1868) LR 2 A & E 116 at 150 et seq; on appeal LR 2 PC 365; and see PARAS 303, 311 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/347. Reformation statutes.

347. Reformation statutes.

The constitution of the Church of England, which had hitherto been determined by the general canon law¹, underwent great changes in consequence of the Reformation statutes², which secured the submission to the Crown of the clergy in England and recognised the Church of England as a separate national church. The Sovereign was declared to be supreme in all civil and ecclesiastical matters and the Pope was declared to have no jurisdiction in the realm of England³. All civil and ecclesiastical causes were henceforward in the exclusive jurisdiction of the King's courts, spiritual and temporal⁴, and appeals to the See of Rome were expressly forbidden⁵.

New Articles of Religion, known as the Thirty-Nine Articles, were drawn up, differing in some points from the teaching of the Church of Rome. These were recognised by statute; and formerly no clergyman could be ordained or hold a living or curacy without making his declaration of assent to them⁶.

New service books and ordinals suitable for carrying out the reformed religion were prepared, and their use was enforced under penalties by successive Acts of Uniformity⁷.

1 As to the canon law, see PARAS 305-308 ante.

2 These statutes were the Ecclesiastical Appeals Act 1532 (repealed); the Submission of the Clergy Act 1533 (largely repealed); the Appointment of Bishops Act 1533 (partly repealed); the Ecclesiastical Licences Act 1533 (largely repealed); and 26 Hen. 8 c. 1 (Supremacy of the Crown) (1534) (repealed: see note 3 infra).

3 Articles of Religion 37 (in the Book of Common Prayer). This article as it stood in 1533 (then no. 36) declared that the King of England was supreme head on earth next to Christ of the Church of England and Ireland, following 26 Hen. 8 c. 1 (Supremacy of the Crown) (1534). That Act was repealed by 1 & 2 Phil. & Mar. c. 8 (See of Rome) (1554), and the repeal was confirmed by 1 Eliz. 1 c. 1 (Act of Supremacy) (1558), s 4 (repealed). Accordingly the article as revised in 1571, and as it now stands, declares that the Sovereign 'hath the chief power in this Realm... unto whom the chief Government of all Estates of this Realm, whether they be Ecclesiastical or Civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction'. See also Revised Canons Ecclesiastical, Canon A7, which acknowledges that the Queen, 'acting according to the laws of the realm, is the highest power under God in this kingdom, and has supreme authority over all persons in all causes, as well ecclesiastical as civil'; and see PARA 352 post, and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 14.

4 Ecclesiastical Appeals Act 1532, s 1 (repealed).

5 Ibid s 2 (repealed).

6 See the Clerical Subscription Act 1865, ss 1, 4, 5 (repealed); Revised Canons Ecclesiastical, Canon C15 (in its original form). See also PARAS 660, 844, 851 post; and Canon A2, which declares that the Thirty-Nine Articles are agreeable to the Word of God and may be assented unto with a good conscience by all members of the Church of England. The modern declaration of assent declares belief in the faith revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England (including the Thirty-Nine Articles) bear witness: see Revised Canons Ecclesiastical, Canon C15 para 1 (1) (substituted by Amending Canon No. 4).

7 Acts of Uniformity 1548, 1551, 1558, 1662 (almost entirely repealed). 'Act of Uniformity', as used in Measures passed by the Church Assembly or General Synod, means the Act of Uniformity 1662, and includes the enactments confirmed and applied by that Act to the Book of Common Prayer: Interpretation Measure 1925, s 3; Synodical Government Measure 1969, s 2 (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/348. The Acts of Union.

348. The Acts of Union.

The Ordination of Ministers Act 1571¹, the Act of Uniformity 1662² and all other Acts of Parliament in force at the date of the union with Scotland for the establishment and preservation of the Church of England³, and the doctrine, worship, discipline and government of that church were further secured by the Act of Union with Scotland⁴, as were also the true protestant religion and Presbyterian Church government of the Church of Scotland⁵. The Act for securing the Church of England as by law established, and the Act of Parliament of Scotland for securing the protestant religion and Presbyterian Church government were declared to be fundamental and essential conditions of the union⁶.

Provisions to the like effect are contained in the statutes affecting the Queen and the oath and declaration required to be taken by her⁷.

In 1800 the Churches of England and Ireland were united⁸, but in 1871 the union was dissolved and the Church of Ireland was disestablished⁹. The Church of England's constitution was unaffected by this temporary union¹⁰.

The Church in Wales¹¹ was disestablished on 31st March 1920¹².

1 This Act is now repealed.

2 As to the Act of Uniformity, see PARA 347 note 7 ante.

3 By the Coronation Oath Act 1688, s 3, the coronation oath included the promise to maintain the laws of God, the true profession of the gospel and the protestant reformed religion established by law: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 28.

4 Union with Scotland Act 1706, s 3, incorporating 6 Anne c. 8 (Maintenance of Church of England) (1706-7), which recites that it is reasonable and necessary that the true protestant religion professed and established by law in the Church of England, and its doctrine, worship, discipline and government, should be effectually and unalterably secured.

5 Union with Scotland Act 1706, ss 2, 4.

6 Ibid ss 3-5.

7 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39.

8 Union with Ireland Act 1800. Article 5, in a passage since repealed by the Statute Law Revision Act 1953, s 1, Sch. 1, provided that the Churches of England and Ireland, as then by law established, should be united into one protestant episcopal church to be called the United Church of England and Ireland, and that the doctrine, worship, discipline and government of the United Church should be and remain in full force for ever as the same were then by law established for the Church of England.

9 Irish Church Act 1869, s 2.

10 Ibid s 69, is a saving clause providing that in all enactments and other documents provisions relating to the United Church of England and Ireland shall be read distributively in respect of the Church of England and the Church of Ireland.

11 I.e the Church of England so far as it extended to and existed in Wales and what, before the Local Government Act 1972, was Monmouthshire.

12 See generally para 322 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/349. Legislation before the Enabling Act.

349. Legislation before the Enabling Act.

Before the Reformation the Church in England was subject to papal legislation although the rules of the general canon law were considerably modified¹. After the Reformation the only ecclesiastical synods authorised were the two provincial convocations² with limited legislative powers. The clergy were and still are forbidden to assemble in convocation without the Sovereign's assent, make canons without her licence or execute any canon without her assent and not even then, if the canon offends against the royal prerogative or the common or statute law or any custom of the realm³.

The Canons of 1603 and later canons⁴, were made by virtue of this procedure; but (apart from these canons) since the Reformation the bulk of ecclesiastical legislation was in fact effected by Parliament until the creation of the Church Assembly (now the General Synod). After the Revolution of 1689 the direct intervention of the Sovereign in church affairs largely disappeared and under a constitutional monarchy the royal supremacy became, in effect, the supremacy of Parliament⁵. Statutes were passed regulating every aspect of church government⁶, including the enforcement of clerical discipline and the creation of new dioceses⁷.

1 See PARA 305 et seq ante.

2 See PARA 442 et seq post.

3 Submission of the Clergy Act 1533, ss 1, 3; *Case of Convocations* (1611) 12 Co Rep 72. Similar restrictions now apply to the making, promulgating and executing of canons by the General Synod: Synodical Government Measure 1969, s 1 (3); see PARA 400 post. Both convocations have frequently passed resolutions as opposed to canons, but these are not in law binding on either the clergy or the laity.

4 See PARA 307 ante.

5 Report of the Archbishops' Committee on Church and State (SPCK 1916) 23.

6 Eg the establishment of Queen Anne's Bounty (Queen Anne's Bounty Act 1703 (repealed)); church building and the division of parishes (see PARAS 537, 788 post).

7 Eg the Clergy Discipline Act 1892 (repealed). As to dioceses, see PARA 454 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/350. Legislation after the Enabling Act.

350. Legislation after the Enabling Act.

As a result of addresses presented to the King in 1919 by both convocations¹ the Church of England Assembly (Powers) Act 1919², commonly known as the Enabling Act, was passed, which created the National Assembly of the Church of England (usually referred to as the Church Assembly³). By the Synodical Government Measure 1969 the Church Assembly was renamed and reconstituted as the General Synod of the Church of England⁴.

Parliamentary control over church legislation remains unfettered, and Parliament may still legislate for the church without the intervention of the General Synod, but by a novel system of devolution the General Synod is enabled (as was the Church Assembly) to present Measures in completed form for the consent of Parliament. Parliament may accept or reject but cannot amend a General Synod Measure, and normally it is by General Synod Measures that legislation affecting the church is now enacted⁵. Further, Parliament has given the General Synod power to provide by canon with respect to matters of worship and the obligations and forms of assent to the doctrine of the Church of England⁶.

1 For the text of the addresses, see 10 Halsbury's Statutes (3rd Edn) 51, 52.

2 See PARA 384 post.

3 Interpretation Measure 1925, s 3.

4 Synodical Government Measure 1969, s 2: see PARA 385 post.

5 See PARA 399 et seq post.

6 See the Church of England (Worship and Doctrine) Measure 1974, and PARAS 660 (assent), 935 et seq post (worship).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(1) CONSTITUTIONAL STATUS/351. Constitutional status of the clergy.

351. Constitutional status of the clergy.

At the Reformation the ancient territorial constitution of the country into provinces and dioceses was preserved, but it has since been modified by statute¹. The archbishops and certain bishops² continue to sit in the House of Lords. The clergy remained under their ancient common law disability whereby they are precluded from sitting in Parliament; this was rendered statutory in 1801³. Since 1664 the clergy, like the laity, have been taxed by the House of Commons instead of, as formerly, by convocations⁴, and they may now vote for members of Parliament, a privilege which formerly did not belong to them.

1 See PARAS 455, 456 post.

2 As to the bishops who have seats in the House of Lords, see PARLIAMENT vol 78 (2010) PARA 829 et seq.

3 House of Commons (Clergy Disqualification) Act 1801, ss 1, 2: see PARA 680 post.

4 *R v The Archbishop of York* (1888) 20 QBD 740 at 746. As to the status of the clergy generally, see PARA 673 et seq post.

UPDATE

351 Constitutional status of the clergy

TEXT AND NOTE 3--1801 Act repealed: House of Commons (Removal of Clergy Disqualification) Act 2001 Sch 2. As to the removal of the disqualification see s 1, PARA 680 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/352. Nature of the royal supremacy.

(2) THE ROYAL SUPREMACY

352. Nature of the royal supremacy.

The Sovereign, acting according to the laws of the realm, is the highest power under God in the Kingdom and has supreme authority over all persons in all causes, ecclesiastical as well as civil¹. By the Act of Supremacy 1558 such jurisdictions, privileges, superiorities and pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority had theretofore been, or might lawfully be, exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order and correction of the same, and all manners of errors, heresies, schisms, abuses, offences, contempts and enormities were united and annexed to the Imperial Crown of the realm². The royal supremacy is exercised in a constitutional manner according to law³.

1 Revised Canons Ecclesiastical, Canon A7; Articles of Religion 37. In past legislation the Sovereign had been described as 'the only supreme head on earth of the Church of England' (26 Hen. 8 c. 1 (Supremacy of the Crown) (1534) (repealed)); and as 'the Supreme Governor of the Realm in all spiritual and ecclesiastical causes as well as temporal' (1 Eliz. 1 c. 1 (Act of Supremacy) (1558), s 9). The Act of 1558 has been repealed except for the provision referred to in note 2 infra.

2 1 Eliz. 1 c. 1 (Act of Supremacy) (1558), s 8. This statute is only declaratory of the common law: see *Caudrey's Case* (1591) 5 Co Rep 1a at 8a.

3 Bract lib 3, De Actionibus, c.9, fo 107; 1 Bl Com (14th Edn) 239. Cf. Revised Canons Ecclesiastical, Canon A7: see note 1 supra.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/353. The Sovereign not a minister of the Word.

353. The Sovereign not a minister of the Word.

Although it is said that the Sovereign is *persona sacra*¹, neither this fact nor the accepted definitions of the nature of the royal supremacy² confer upon the Sovereign personally the status of a minister of the Word, as plainly appears from the Articles of Religion, which lay down that, although we attribute to the Sovereign the chief government, we give not to our princes the ministering of God's Word or of the sacraments³, but only that prerogative which we see to have been given always to all godly princes in holy scriptures by God himself; that is that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evildoers⁴.

1 Com Dig, Ecclesiastical Persons (A).

2 See PARA 352 ante.

3 Articles of Religion 37. 'The which thing' the injunctions of Queen Elizabeth 'do most plainly testify': Articles of Religion 37.

4 Articles of Religion 37. Cf. 'Your Grace being a layman': 37 Hen. 8 c. 17 (Ecclesiastical Jurisdiction) (1545), preamble (repealed).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/354. The Sovereign must be in communion with the church.

354. The Sovereign must be in communion with the church.

The Sovereign must join in communion with the Church of England as by law established¹. To make it clear that the Sovereign is not personally and secretly a Roman Catholic, she is required to make, on accession to the Crown, a doctrinal declaration², solemnly and sincerely in the presence of God professing, testifying and declaring that she is a faithful Protestant, and that she will, according to the true intent of the enactments which secure the Protestant succession to the throne, uphold and maintain those enactments to the best of her powers according to law³.

1 Act of Settlement (1700), s 3; Bill of Rights (1688), s 1; see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39.

2 Bill of Rights (1688), s 1; Act of Settlement (1700), s 2.

3 Accession Declaration Act 1910, s 1, Schedule. As to when the declaration has been made by George V, George VI and Elizabeth II, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/355. The Sovereign as the supreme Ordinary.

355. The Sovereign as the supreme Ordinary.

The Sovereign is the supreme Ordinary¹ and visitor; as such she visits the archbishops² and receives their resignations, for archbishops can resign to no one but the Queen³. Similarly she has power to visit various places which are exempt from episcopal visitation and known as royal peculiars⁴ and generally to exercise various powers formerly vested in the Pope. She has control over the granting of certain licences and dispensations under the Act for exoneration from Roman exactions⁵, but has no general power to dispense from the laws ecclesiastical⁶.

As in matters secular, so in matters ecclesiastical, the law can in general be altered only by the Queen in Parliament⁷, that is by or by virtue of an Act of Parliament. Although much ecclesiastical legislation is today effected by Measures of the General Synod of the Church of England, these Measures do not become law until they have been presented by Parliament to the Queen and have received the royal assent⁸.

1 See PARA 458 post.

2 3 Stephen's Commentaries (14th Edn) 25. As to visitation, see PARA 490 et seq post.

3 1 Bl Com (14th Edn) 382; and see PARA 436 post.

4 See PARA 492 post.

5 Ecclesiastical Licences Act 1533.

6 Bill of Rights (1688), s 1.

7 See PARAS 304, 307 ante.

8 See the Church of England Assembly (Powers) Act 1919, s 4; Synodical Government Measure 1969, s 2 (2); and see PARA 406 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/356. The Sovereign's judicial functions.

356. The Sovereign's judicial functions.

By virtue of the royal supremacy¹, the Sovereign is the ultimate court of appeal in ecclesiastical suits² but, as in civil matters, she does not exercise her judicial functions in person but through her judges³.

1 See PARA 352 ante.

2 3 Bl Com (14th Edn) 51.

3 As to the judicial authorities empowered to exercise this jurisdiction in different classes of cases, see PARA 1272 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/357. References to the Sovereign in forms of service.

357. References to the Sovereign in forms of service.

In the prayers for or referring to the Sovereign or other members of the royal family contained in any form of service authorised for use in the Church of England the names may be altered, and any other necessary alterations made, from time to time as circumstances require by royal warrant, and those prayers as so altered are to be used thereafter¹.

¹ Church of England (Worship and Doctrine) Measure 1974, s 1 (7). This provision replaced the Act of Uniformity 1662, s 21, under which such changes were made by Order in Council (see Gib Cod 280). See eg Orders in Council made on 4th March 1952, consequent upon the accession of Queen Elizabeth II; on 21st May 1953, consequent upon the death of Queen Mary; and on 30th July 1958, consequent upon the Duke of Cornwall becoming Prince of Wales.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/358. The Sovereign's right of patronage.

358. The Sovereign's right of patronage.

The Sovereign is patron paramount of all the archbishoprics, bishoprics and benefices in England¹, and has very extensive church patronage, including the appointment of bishops² and deans, and the appointment to a certain number of cathedral preferments and benefices³. As patron paramount she is entitled to the right of presentation by lapse to all benefices which are not regularly filled⁴. She is the guardian of the temporalities of a bishopric during a vacancy, but no longer receives the profits for her own use⁵. She is entitled to present to all livings vacated by reason of the incumbent being appointed to a diocesan bishopric in England⁶, and enjoys the right of presenting to all dignities and benefices of the advowson of an archbishopric or bishopric during a vacancy⁷. In certain cases she may create new bishoprics overseas⁸.

1 Gib Cod 763: see PARA 784 post.

2 Coke bases the reason for this prerogative on the ground that bishoprics are of the King's foundation: see 1 Co Inst 134, 344. Regarding the prerogative generally, see *R v Archbishop of Canterbury* (1848) 11 QB 483. For particulars of the foundation of bishoprics and the appointment of bishops, see PARA 454 et seq post.

3 As to deans, see PARA 640 et seq post, and as to benefices in the gift of the Crown, see Clergy List, Crockford's Directory. As to the Crown's right to first fruits and tenths, see PARA 1223 post. The Crown also has a right to corodies, namely, to send one of its chaplains to be maintained by the bishop, or to have a pension allowed him until the bishop promotes him to a benefice (1 Bl Com (14th Edn) 283), but this right has fallen into disuse.

4 As to lapse, see PARA 826 et seq post.

5 See PARA 488 post.

6 See *Bishop of London v A-G* (1694) Show Parl Cas 164, HL; *R v Provost and Fellows of Eton College* (1857) 8 E & B 610. See also PARA 784 post.

7 Bac Abr, Prerogative (D) 2; and see *Potter v Chapman* (1750) Amb 98 at 101, and PARA 784 post.

8 See PARA 315 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/359. Convocations and the General Synod.

359. Convocations and the General Synod.

By virtue of the royal supremacy the Sovereign directs the assembling and dissolution of the Convocations of Canterbury and York¹ and has supreme authority as to the making and ratification of canons².

The Sovereign does not convene or prorogue the General Synod of the Church of England³, but Measures of the synod are not binding until they have been laid before Parliament and, in accordance with a resolution of each House of Parliament, have been presented to the Sovereign for the royal assent. When that assent has been given a Measure has the force and effect of an Act of Parliament⁴.

1 See PARA 442 et seq post.

2 Submission of the Clergy Act 1533, s 1; Synodical Government Measure 1969, s 1 (3). The provisions of the Submission of the Clergy Act 1533 are only declaratory of the common law: see *Case of Convocations* (1611) 12 Co Rep 72. The power to make canons, formerly exercisable by the convocations, is now vested in the General Synod: see PARA 400 post. As to the legal effect of canons, see PARA 308 ante.

3 See Appendix to an Address presented to King George V in connection with the establishment of the Church Assembly in 1919 para 7: see PARA 350 ante. The Church Assembly has been renamed and reconstituted as the General Synod of the Church of England: Synodical Government Measure 1969, s 2. As to the constitution of the General Synod, see PARA 384 et seq post.

4 Church of England Assembly (Powers) Act 1919, s 4; Synodical Government Measure 1969, s 2 (2): see PARA 410 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/ (2) THE ROYAL SUPREMACY/360. Disqualification of Crown advisers.

360. Disqualification of Crown advisers.

No person professing the Roman Catholic or the Jewish religion may lawfully, either directly or indirectly, advise the Sovereign concerning the appointment to or disposal of any office or preferment in the Church of England or in the Church of Scotland¹. Any person who is convicted of an offence in either of the foregoing cases is deemed guilty of a high misdemeanour² and disabled for ever from holding any office under the Crown³.

In the event of the office of Lord Chancellor being held by an adherent of the Roman Catholic faith Her Majesty in Council may provide for the exercise of any or all the visitational or ecclesiastical functions normally performed by him and any patronage to livings normally in his gift to be performed by the Prime Minister or any other minister of the Crown⁴.

1 Roman Catholic Relief Act 1829, s 18; Jews Relief Act 1858, s 4. These provisions are also expressed to apply to advice given to a regent. As to the exercise of rights of patronage by Roman Catholics and Jews, see PARAS 782, 786 post.

2 'High misdemeanour' is a term used in old books to describe a positive misprision (or neglect or contempt) of which the principal example is maladministration of high office, usually punishable by impeachment resulting in disability to hold office: see 4 Bl Com (14th Edn) 121.

3 Roman Catholic Relief Act 1829, s 18; Jews Relief Act 1858, s 4.

4 Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, s 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(i) Bodies superseded/361. Queen Anne's Bounty.

(3) THE CHURCH COMMISSIONERS

(i) Bodies superseded

361. Queen Anne's Bounty.

After the Reformation the Crown became entitled to first fruits and tenths¹. In 1704 Queen Anne granted all her revenue of first fruits and tenths to a corporation established with the name of 'the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy'². In addition Queen Anne's Bounty received such portion of the profits of a benefice sequestered for non-residence as the bishop ordered to be paid to it for the purposes of the bounty³. Queen Anne's Bounty also, in numerous classes of cases, received sums appropriated for the purpose of augmenting particular benefices⁴. In 1926 nearly all first fruits and tenths were extinguished and redemption money determined for the remainder⁵.

The primary object of Queen Anne's Bounty was the augmentation of the maintenance of parsons, vicars, curates and ministers officiating in any church or chapel in England where the liturgy and rites of the Church of England were used and observed⁶. By the letters patent constituting the corporation, it was authorised to propose rules for receiving, managing and distributing the bounty and any other gifts which might be given or bequeathed for the same purpose, and the rules became effectual when approved by the Crown under the sign manual⁷.

1 26 Hen. 8 c. 3 (First Fruits and Tenths) (1534), ss 1, 9 (repealed by the First Fruits and Tenths Measure 1926, s 6, Sch. 2 (repealed)). As to the nature of first fruits and tenths, see PARA 1223 post.

2 See the Queen Anne's Bounty Act 1703, preamble (repealed). The corporation of Queen Anne's Bounty was constituted by letters patent under the Great Seal dated 3rd November 1704.

3 Pluralities Act 1838, s 54.

4 As to the proceeds of sales of parsonage houses and glebe, see PARA 1159 et seq post.

5 See the First Fruits and Tenths Measure 1926, and PARA 1223 post.

6 Queen Anne's Bounty Act 1703, s 1 (repealed).

7 Queen Anne's Bounty Act 1714, s 3 (repealed).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

361 Queen Anne's Bounty

NOTES 1, 5--1926 Measure repealed: Statute Law (Repeals) Act 1993.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(i) Bodies superseded/362. Ecclesiastical Commissioners.

362. Ecclesiastical Commissioners.

In 1835 two royal commissions were appointed to consider the state of all dioceses in England and Wales, with reference to the amount of their revenues and the more equal distribution of episcopal duties, and the state of the cathedral and collegiate churches in England and Wales; in their reports they made extensive recommendations¹. In 1836 a body corporate called the Ecclesiastical Commissioners was constituted to lay before the King in Council such schemes as appeared to it best adapted for carrying into effect these recommendations². Originally there were thirteen commissioners, both spiritual and lay, but this number was greatly increased and the majority of commissioners, who included the two archbishops, all the bishops of England and the Lord Chancellor, held their appointments *ex officio*³.

In 1850 three commissioners were added, called the Church Estates Commissioners; these commissioners are now members of the Church Commissioners and are appointed in the same manner as formerly⁴.

1 See the Ecclesiastical Commissioners Act 1836, preamble.

2 See the Ecclesiastical Commissioners Act 1836.

3 Ecclesiastical Commissioners Act 1840, s 78 (repealed).

4 See the Ecclesiastical Commissioners Act 1850, s 1; Church Commissioners Measure 1947, s 1 (2), Sch. 1; and PARA 379 et seq post.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

362 Ecclesiastical Commissioners

NOTE 1--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

NOTE 4--1850 Act s 1 now s 1(1): Statute Law (Repeals) Act 1993. 1947 Measure Sch 1 para 1 amended: SI 2007/2128.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(ii) Constitution of the Church Commissioners/363. Establishment of the Church Commissioners.

(ii) Constitution of the Church Commissioners

363. Establishment of the Church Commissioners.

In 1947 a body corporate having perpetual succession called the Church Commissioners was established for the purpose of uniting Queen Anne's Bounty with the Ecclesiastical Commissioners¹. Queen Anne's Bounty and the Ecclesiastical Commissioners were subsequently dissolved, and all functions², rights and privileges of either of those bodies were transferred to the Church Commissioners³; all property vested in either of them vested in the Church Commissioners and property held in trust for either of them is thenceforward held in trust for the Church Commissioners⁴. Insofar as they are charities, the Church Commissioners and any institution administered by them are exempt charities within the meaning of the Charities Act 1960⁵.

The commissioners' business, except the exercise of powers which are required to be exercised at a general meeting of the commissioners, is transacted by a Board of Governors, a General Purposes Committee and an Assets Committee⁶.

The Church Commissioners are either ex officio members⁷ or are appointed or nominated⁸.

1 Church Commissioners Measure 1947, s 1 (1); Charities Act 1960, s 48 (2), Sch. 7, Part II. As to the commissioners' common seal, see PARA 370 post.

2 'Functions' includes powers and duties: Church Commissioners Measure 1947, s 18 (1).

3 Ibid s 2. The dissolution and transfer took effect on 1st April 1948, the date appointed by notice by the Archbishop of Canterbury under s 18 (1): see the London Gazette, 7th November 1947, p. 5251. The Ecclesiastical Commissioners' functions had extended far beyond those for which the commissioners were originally established (see PARA 362 ante). For the Church Commissioners' functions, see PARA 371 et seq post. On the transfer of functions pending proceedings did not abate and existing contracts became enforceable by and against the Church Commissioners: see the Church Commissioners Measure 1947, s 13.

4 Ibid s 2. A vesting of property by virtue of s 2 did not affect any previously existing trust, mortgage or other charge affecting the property or any previously existing lease or tenancy of it: s 2 proviso. Transfer of stock in the books of companies standing in the name of Queen Anne's Bounty or the Ecclesiastical Commissioners into the name of, and the payment of dividends to, the Church Commissioners was regulated by s 14.

5 Charities Act 1960, s 45 (1), Sch. 2, PARA. (f): see CHARITIES vol 8 (2010) PARA 315.

6 Church Commissioners Measure 1947, ss 3, 6; Church Commissioners Measure 1964, ss 1, 2 (1) (a); Church Commissioners Measure 1970, s 1. As to the Board of Governors, see PARAS 368, 372, 375, 378 post; as to the General Purposes Committee, see PARAS 381, 382 post; and as to the Assets Committee, see PARAS 381, 383 post.

7 See PARA 364 post.

8 See PARA 365 post.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

363 Establishment of the Church Commissioners

NOTE 3--1947 Measure s 13 amended: National Institutions Measure 1998 s 13(2).

NOTE 4--1947 Measure s 14 repealed: 1998 Measure s 13(2).

NOTE 5--Charities Act 1960 s 45(1), Sch 2 para (f) now Charities Act 1993 s 96(1), Sch 2 para (x): see CHARITIES vol 8 (2010) PARA 315.

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364. Ex officio Church Commissioners.

The ex officio Church Commissioners are the Archbishop of Canterbury (who acts as their chairman), the Archbishop of York, the diocesan bishops of the two provinces of England, the three Church Estates Commissioners², the Lord Chancellor, the Lord President of the Council, the First Lord of the Treasury, the Chancellor of the Exchequer, the Home Secretary, the Speaker of the House of Commons, the Lord Chief Justice, the Master of the Rolls, the Attorney General, the Solicitor General, the Lord Mayor of London, the Lord Mayor of York and the Vice-Chancellors of the Universities³ of Oxford and Cambridge⁴.

1 Church Commissioners Measure 1947, s 4 (1). As to the chairman at meetings at which the Archbishop of Canterbury is not present, see PARA 373 post.

2 The continued appointment of these three commissioners is not affected by the Church Commissioners Measure 1947. As to the mode of appointment, see PARA 362 ante.

3 The Vice-Chancellor of each university may nominate a person to serve as a commissioner in his stead during his own term of office: *ibid* s 1 (2), Sch. 1 para 1.

4 *Ibid* Sch. 1 para 1.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

364 Ex officio Church Commissioners

TEXT AND NOTES--1947 Measure Sch 1 (substituted by the National Institutions Measure 1998 Sch 4 para 8(a); and amended by SI 2007/2128). The ex officio members are now the First Lord of the Treasury; the Lord President of the Council; the Lord Chancellor; the Speaker of the House of Commons; the Secretary of State for the Department for Culture, Media and Sport; the Archbishops of Canterbury and York; and the Church Estates Commissioners: 1947 Measure Sch 1 para 1(a), (b).

The commissioners in office on 1 January 1999 (ie the date on which the 1998 Measure came into force: see PARA 427A NOTE 1), other than the ex officio members under the 1947 Measure Sch 1 para 1, ceased to be commissioners on that date: 1998 Measure s 7(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(ii) Constitution of the Church Commissioners/365. Appointed and nominated Church Commissioners.

365. Appointed and nominated Church Commissioners.

There are thirty-five other Church Commissioners who consist of five deans¹ appointed by the General Synod², ten other clerks in holy orders and ten laymen appointed by the General Synod³, four laymen nominated by Her Majesty, four persons nominated by the Archbishop of Canterbury⁴ and two aldermen of the City of London⁵ appointed by the court of aldermen of the City of London⁶.

1 'Dean' includes the dean or provost of any cathedral church in England and the Deans of Westminster and Windsor: Church Commissioners Measure 1947, s 18 (1).

2 Three deans are appointed from the Province of Canterbury and two from the Province of York: *ibid* s 1 (2), Sch. 1 para 1.

3 Commissioners appointed by the General Synod (who need not be members of the synod) are appointed for five years in such manner as the synod may determine: Sch. 1 para 2; Synodical Government Measure 1969, s 2 (2). A year is a period of twelve months commencing on 1st April: Church Commissioners Measure 1947, Sch. 1 para 2.

4 Of these eight at least two must be, or have been, Queen's Counsel: *ibid* Sch. 1 para 1. Commissioners nominated by the Archbishop of Canterbury are nominated for such number of years as he may determine: Sch. 1 para 2. The number of years for which commissioners are nominated by Her Majesty will depend on the terms of the letters patent. For the meaning of 'year', see note 3 *supra*.

5 The aldermen are appointed for one or more years up to five as the court of aldermen may determine: *ibid* Sch. 1 para 2. For the meaning of 'year', see note 3 *supra*.

6 *Ibid* Sch. 1 paras 1, 2; Synodical Government Measure 1969, s 2 (2).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

365 [Elected] and nominated Church Commissioners

TEXT AND NOTES--1947 Measure Sch 1 substituted by National Institutions Measure 1998 Sch 4 para 8(a); and amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 2 para 4; SI 2006/1640; and SI 2007/2128). The following are now the elected or nominated commissioners: (1) four bishops elected by the House of Bishops of the General Synod from among their number; (2) two deans elected by all the deans; (3) three other clerks in Holy Orders elected by those members of the House of Clergy of the General Synod who are not deans, whether or not those clerks are members of that House; (4) four lay persons elected by the House of Laity of the General Synod, whether or not those persons are members of that House; (5) nine persons nominated as follows: (a) three by Her Majesty, (b) three by the Archbishops of Canterbury and York acting jointly, and (c) three by the Archbishops of Canterbury and York acting jointly after consultation with the Lord Mayors of the City of London and the

City of York, the Vice Chancellors of the Universities of Oxford and Cambridge and such other persons as appear to the Archbishops to be appropriate; at least one of the persons nominated under (5) must be or have been Queen's Counsel: 1947 Measure Sch 1 para 1(b).

Elected commissioners hold office for five years and are elected in accordance with the Standing Orders of the General Synod; nominated commissioners hold office for such number of years as the person or persons making the nomination may determine; any such commissioner is eligible for re-election or re-nomination: 1947 Measure Sch 1 para 2 (substituted by 1998 Measure Sch 4 para 8(b); and amended by 2006 Measure Sch 2 para 4(1)(b). See further Sch 2 para 4(2).

The commissioners in office on 1 January 1999 (ie the date on which the 1998 Measure came into force: see PARA 427A NOTE 1), other than the ex officio members under the 1947 Measure Sch 1 para 1, ceased to be commissioners on that date: 1998 Measure s 7(2).

A person may not be a member (or stand for membership) of more than one of the following bodies at any one time, namely: the Archbishops' Council (see PARA 427A), the Church Commissioners, the Pensions Board, the Appointments Committee (see PARA 383A) or the Business Committee (see PARA 383B): 1998 Measure s 11.

NOTE 1--In definition of 'dean' reference to provost omitted: 1947 Measure s 18(1) (amended by 2006 Measure Sch 2 para 3).

NOTE 3--Reference to April now to January: 1947 Measure Sch. 1 para 2 (amended by 2006 Measure Sch 2 para 4(1)(b)).

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366. Reappointments etc., vacancies and retirements.

Church Commissioners appointed by the General Synod or the court of aldermen of the City of London or nominated by the Archbishop of Canterbury are eligible for reappointment or renomination¹. Moreover these commissioners hold office, notwithstanding the expiration of the period for which they were appointed or nominated, until a successor is appointed or nominated². If a casual vacancy occurs among these commissioners it may be filled by the body or person by whom the commissioner vacating office was appointed or nominated³.

When an appointed or nominated commissioner proposes to retire his intention to do so must be notified by him in writing to the secretary of the commissioners, who must forthwith give notice to the person or body by whom that commissioner was appointed or nominated⁴.

1 Church Commissioners Measure 1947, Sch. 1 para 2; Synodical Government Measure 1969, s 2 (2).

2 Church Commissioners Measure 1947, Sch. 1 para 3.

3 Ibid s 7 (1), Sch. 4 para 3; Church Commissioners Measure 1964, s 2 (1) (e). A commissioner appointed or nominated to fill a casual vacancy holds office for the remainder of the term, if any, for which his predecessor was appointed or nominated: Church Commissioners Measure 1947, Sch. 4 para 4.

4 Ibid Sch. 4 para 2.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

366 Reappointments etc, vacancies and retirements

TEXT AND NOTE 1--1947 Measure Sch 1 para 2 substituted: see PARA 365.

TEXT AND NOTE 2--1947 Measure Sch 1 para 3 amended: National Institutions Measure 1998 Sch 4 para 8(c).

NOTES 3, 4--1947 Measure Sch 4 para 2 amended, PARA 3 substituted: 1998 Measure Sch 4 para 9.

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367. Commissioners' qualifications and disqualifications.

Before acting as a Church Commissioner every lay commissioner who is not a commissioner ex officio must declare in writing that he is a member of the Church of England¹. No salaried official of any central or diocesan body in the Church of England may be a commissioner². Any appointed commissioner who was qualified by virtue of being a dean³, a clerk in holy orders or a layman appointed by the General Synod vacates his membership if he ceases to be so qualified⁴.

A defect in the qualification, appointment or nomination of any commissioner does not invalidate the proceedings of the commissioners⁵.

1 Church Commissioners Measure 1947, s 1 (2), Sch. 1 para 6.

2 Ibid Sch. 1 para 4.

3 For the meaning of 'dean', see PARA 365 note 1 ante.

4 Church Commissioners Measure 1947, Sch. 1 para 5; Synodical Government Measure 1969, s 2 (2).

5 Church Commissioners Measure 1947, s 7 (1), Sch. 4 para 1.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

367 Commissioners' qualifications and disqualifications

TEXT AND NOTE 4--1947 Measure Sch 1 para 5 substituted: National Institutions Measure 1998 Sch 4 para 8(d). Persons now listed are persons elected who qualified for election by virtue of being a bishop, a dean, a clerk in Holy Orders or a lay person: Sch 1 para 5, as so substituted; Sch 1 para 5 amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 2 para 4(1)(c).

If a commissioner who was elected by members of a House of the General Synod who is a member of that House ceases to be a member thereof, he ceases to be a commissioner, but if he ceases to be a member of the General Synod by reason of its dissolution he may continue to act as a commissioner during the period of dissolution, unless he is not re-elected to the Synod, in which case an election to fill his place as a Commissioner will be held in accordance with the Standing Orders of the General Synod: 1947 Measure, Sch 1 para 5A, added by Church of England (Miscellaneous Provisions) Measure 1978 s 4(3); substituted by 1998 Measure Sch 4 para 8(e); amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 2 para 4(1)(d).

NOTE 4--1947 Measure Sch 4 para 1 amended: 1998 Measure Sch 4 para 9.

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368. Board of Governors.

The Board of Governors, which is the executive body of the Church Commissioners¹, consists of the Archbishop of Canterbury (who is chairman of the board²), the Archbishop of York, the three Church Estates Commissioners³, twenty-two other commissioners appointed by the whole body of Church Commissioners⁴, and such other commissioners, if any, as may be co-opted by the board⁵. The members appointed by the Church Commissioners hold office for six years, one half of them retiring every third year⁶. Members are appointed to fill the vacancies thus caused at the commissioners' annual general meeting each third year⁷.

A defect in the qualification, or appointment of any member of the board does not invalidate the proceedings of the board⁸.

Casual vacancies among members of the board may be filled by the board⁹.

1 As to the functions of the Board of Governors, see PARAS 372, 378 post.

2 Church Commissioners Measure 1947, s 5 (2). As to the chairman at meetings when the Archbishop of Canterbury is not present, see PARA 373 post.

3 See PARA 362 ante, 379 post.

4 In these twenty-two there must be six diocesan bishops, two deans, six other clerks in holy orders and eight laymen of whom six must be chosen from the lay commissioners appointed by the General Synod: Church Commissioners Measure 1947, s 5 (1), Sch. 2 para 2; Synodical Government Measure 1969, s 2 (2). If a member of the board who is qualified for membership by virtue of being a diocesan bishop, a dean, a clerk in holy orders or a layman appointed by the General Synod ceases to be so qualified, he thereby vacates his membership: Church Commissioners Measure 1947, Sch. 2 para 8; Synodical Government Measure 1969, s 2 (2).

5 Church Commissioners Measure 1947, Sch. 2 para 1. Up to three commissioners may be co-opted for a period not extending beyond the next triennial election of members of the board: Sch. 2 para 7.

6 Ibid Sch. 2 para 3. The period of office runs from the day following the annual general meeting at which he is appointed to the close of the day on which his successor is appointed: Sch. 2 para 4. The categories of the eleven original members who were appointed for six years are specified in Sch. 2 para 5; and the method of election of members in that category is specified in Sch. 2 para 6.

7 Ibid s 4 (2) (b), Sch. 2 para 3. The members who are to fill the vacancies may be chosen at the meeting by ballot or, if the commissioners so decide, within fourteen days thereafter by postal vote: s 7 (1), Sch. 4 para 5 proviso; Church Commissioners Measure 1964., s 2 (1) (f).

8 Church Commissioners Measure 1947, Sch. 4 para 1

9 Ibid Sch. 4 para 3; Church Commissioners Measure 1964, s 2 (1) (e). A person filling a casual vacancy holds office for the remainder of the term for which his predecessor was appointed or nominated: Church Commissioners Measure 1947, Sch. 4 para 4.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

368 Board of Governors

TEXT AND NOTES 1-7--Replaced. The Board now consists of: the Archbishops of Canterbury and York; the Church Estates Commissioners; and the elected and nominated Church Commissioners: 1947 Measure s 5(1), Sch 1 para 1(b), substituted, Sch 4 para 5 proviso repealed: National Institutions Measure 1998 Sch 4 paras 3, 8, 9.

TEXT AND NOTES 8, 9--1947 Measure Sch 4 paras 1, 4 amended, para 3 substituted: 1998 Measure Sch 4 para 9.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(ii) Constitution of the Church Commissioners/369. Officers.

369. Officers.

The Church Commissioners must from time to time at any general meeting appoint a secretary on such terms as they may think fit¹.

Matters relating to the appointment, terms of service, dismissal and direction of other officers are dealt with by the General Purposes Committee², acting on behalf of and in the name of the commissioners³.

Superannuation benefits are granted to the officers of the commissioners and allocated to spouses or dependants of officers according to rules made by the General Purposes Committee⁴.

1 Church Commissioners Measure 1947, s 8 (1).

2 See PARA 382 post.

3 Church Commissioners Measure 1947, s 6 (2) (d); Church Commissioners Measure 1964, s 1. Officers of both Queen Anne's Bounty and the Ecclesiastical Commissioners were transferred to the Church Commissioners on 1st April 1948 (Church Commissioners Measure 1947, s 15 (1)), with safeguards for their position as regards tenure of office, conditions of service and salary (s. 15 (2)), and for their superannuation rights (s. 17 (1) proviso; Superannuation Act 1972, s 29 (1), Sch. 6 para 21). The other officers referred to include a deputy secretary and under-secretaries and assistant secretaries.

4 Church Commissioners Measure 1947, s 17 (1); Church Commissioners Measure 1964, s 2 (1) (d). The liability of Queen Anne's Bounty or of the Ecclesiastical Commissioners to make any superannuation payments is taken over by the Church Commissioners: Church Commissioners Measure 1947, s 17 (2). The commissioners may increase pensions payable under s 17 (2): see the Church Property (Miscellaneous Provisions) Measure 1960, s 18.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

369 Officers

NOTES--As to the transfer of officers from the Church Commissioners see National Institutions Measure 1998 s 6, Sch 3.

TEXT AND NOTES 2, 3--1947 Measure s 6(2) repealed: 1998 Measure Sch 4 para 4(b).

NOTES 3, 4--1947 Measure s 15(1), (2) repealed, s 17(1) amended: Statute Law (Repeals) Act 2004.

NOTE 4--1960 Measure s 18 amended: Statute Law (Repeals) Act 2004.

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370. Church Commissioners' seal.

The Church Commissioners have a common seal¹ which must be judicially noticed, and which is authenticated by the secretary's signature or (as is in practice usually the case) the signature of some other officer authorised for the purpose by the Board of Governors². A document purporting to be duly sealed and authenticated is receivable in evidence and is deemed to be such an instrument without further proof unless evidence to the contrary is given³.

1 Church Commissioners Measure 1947, s 1 (1).

2 Ibid s 9 (1).

3 Ibid s 9 (2).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

370 [Sealing and execution of documents by the Commissioners]

TEXT AND NOTES 2, 3--A document signed by two members of the Board and expressed (in whatever form of words) to be executed by the Commissioners will have the same effect as if executed under the common seal of the Commissioners: 1947 Measure s 9(3) (added by Church of England (Miscellaneous Provisions) Measure 2006 Sch 2 para 2). A document executed by the Commissioners which makes it clear on its face that it is intended to be a deed has effect, upon delivery, as a deed; and it will be presumed, unless a contrary intention is proved, to be delivered upon its being so executed: 1947 Measure s 9(4) (as so added). In favour of a purchaser a document will be deemed to have been duly executed by the Commissioners if it purports to be signed by two members of the Board: s 9(5) (as so added). In s 9(5) 'purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property: s 9(6) (as so added).

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(iii) Church Commissioners' Functions and Proceedings

371. Church Commissioners' functions.

The Church Commissioners' principal functions¹ are as follows:

- 1 (1) The holding and administering of the former endowments of dignitaries which used to be vested in the Ecclesiastical Commissioners under the various nineteenth-century Ecclesiastical Commissioners Acts² and the carrying of these endowments into their general fund³.
- 2 (2) The application of the general fund for the making of additional provision for the cure of souls in parishes⁴. This in practice means making grants for stipends⁵ and parsonage houses. The use of the general fund for further particular purposes has been authorised by statute from time to time, for example for clergy pensions⁶, for church building in new housing areas⁷, and for making loans to theological colleges⁸.
- 3 (3) The holding of benefice capital, and dealing with it in accordance with the relevant statutory provisions⁹.
- 4 (4) The approval of dealings with glebe¹⁰ and parsonage houses¹¹, and the receipt of purchase money in respect of glebe and parsonage houses; and the approval of dealings with chapter property¹².
- 5 (5) The preparation of schemes and orders in relation to pastoral reorganisation¹³ and redundant churches¹⁴, and of such other schemes as appear to the commissioners best adopted for the carrying into full effect of the provisions of various enactments giving jurisdiction to the commissioners¹⁵.

1 See also PARA 1238 et seq post.

2 Eg the Ecclesiastical Commissioners Act 1836, the Ecclesiastical Commissioners Act 1840, the Ecclesiastical Commissioners Act 1841, the Ecclesiastical Commissioners Act 1850, the Ecclesiastical Commissioners Act 1860, and the Ecclesiastical Commissioners Act 1866.

3 Ecclesiastical Commissioners Act 1840, s 67. As to the general fund, see the Church Commissioners Measure 1947, ss 10 (4)-(6), 18 (2), and PARA 376 post.

4 Ecclesiastical Commissioners Act 1840, s 67.

5 The Church Commissioners, as Central Stipends Authority, keep under review dignitaries' stipends, consult with and advise diocesan authorities as to the pay of clergymen, deaconesses and licensed lay workers; and submit payment schemes for the approval of the General Synod: see the Central Stipends Authority Regulations 1972, and the Church of England Year Book 1975, p. 41.

6 See the Clergy Pensions Measure 1961, as amended, and PARA 738 et seq post.

7 See the New Housing Areas (Church Building) Measure 1954, and PARA 1064 post.

8 See the Church Commissioners (Loans for Theological Colleges and Training Houses) Measure 1964, and PARA 1246 post.

9 See the Benefices (Stabilization of Incomes) Measure 1951, and PARA 1240 et seq post.

10 See the Ecclesiastical Leasing Acts, and PARA 1153 et seq post.

11 See the Parsonages Measure 1938, and PARA 1139 et seq post.

12 See the Cathedrals Measure 1963, and PARA 610 et seq post.

13 See the Pastoral Measure 1968, ss 4-15, and PARA 878 et seq post.

14 See *ibid* s 50, and PARA 1121 et seq post.

15 See the Ecclesiastical Commissioners Act 1836, s 10; Ecclesiastical Commissioners Act 1840, s 83; Ecclesiastical Commissioners Act 1841, s 30; Ecclesiastical Leasing Act 1842, s 15. These functions have nearly all been fulfilled, and the provisions of these and other early Acts relating to schemes, the registration and gazetting of orders and the power to take evidence are virtually spent and have been for many years. For these provisions, see the Ecclesiastical Commissioners Act 1836, ss 9, 10, 12-17; Ecclesiastical Commissioners Act 1840, ss 83-90; Ecclesiastical Commissioners Act 1841, s 30; Ecclesiastical Commission Act 1868, s 5; Church Property (Miscellaneous Provisions) Measure 1960, s 24.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

371 Church Commissioners' functions

TEXT AND NOTES--The commissioners may make loans to diocesan boards of finance for the acquisition of diocesan glebe land, etc: Endowments and Glebe Measure 1976 s 36 (partly repealed by Church of England (Miscellaneous Provisions) Measure 2006 Sch 6).

Now, head (1) The holding and administering of the former endowments of dignitaries which need to be vested in the Ecclesiastical Commissioners under the various nineteenth-century Ecclesiastical Commissioners Acts and the carrying of the income of these endowments into their general fund: 1840 Act s 67 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I).

The commissioners may now, at their discretion, make payments out of their general fund, by way of grant or loan, to the company known as the Church Urban Fund: Church Commissioners (Assistance for Priority Areas) Measure 1988 s 3(1). Any such payment made by way of loan may be made repayable by instalments or otherwise either free of interest or subject to the payment of interest at such a rate as the commissioners think proper: 1988 Measure s 3(2).

The commissioners may seek information from and give advice to a pastoral committee, a diocesan board of finance or a diocesan redundant churches uses committee on any matter concerning its functions, and the committee or board concerned must provide any such information and have regard to any such advice: Pastoral Measure 1983 s 80A (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 23).

TEXT AND NOTE 9--Replaced. The commissioners must make payments towards the stipends of certain clergy in accordance with the 1976 Measure ss 1-8 (see PARA 1240A).

NOTE 13--Consolidated in Pastoral Measure 1983: see ss 3-16.

NOTE 14--Now Pastoral Measure 1983 s 50.

NOTE 15--1836 Act ss 9, 10, 12-17, 1840 Act ss 83, 87, 89, 90, 1841 Act s 30 repealed; 1960 Measure s 24(1) amended: Statute Law (Repeals) Act 2004. 1840 Act s 85

repealed, s 87 amended: Statute Law (Repeals) Act 1993. Ecclesiastical Commission
Act 1868 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4
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372. Board of Governors' powers.

Subject to the provisions of the Church Commissioners Measure 1947¹ all the functions, powers and business of the Church Commissioners, except those required to be exercised or transacted at a general meeting², must be exercised and transacted by the Board of Governors³. The board has power to refer for consideration and report⁴ or to delegate⁵ any matter within its jurisdiction to the General Purposes Committee or the Assets Committee⁶ or to any other committee of commissioners appointed by the board⁷. The board may also make general rules for the direction and guidance of any of these committees as to the matters and acts to be considered and done by the committee and as to the general principles upon which the committee must act in carrying out its delegated functions⁸.

1 Subject to general rules made by the Board of Governors the General Purposes Committee has power to act on staff matters and any urgent matters without reference to the board (see PARA 382 post), and the Assets Committee has exclusive power to act on the commissioner's behalf in relation to the management of assets and estates (see PARA 383 post).

2 See PARA 373 post.

3 Church Commissioners Measure 1947, s 5 (3).

4 Ibid s 5 (4) (a); Church Commissioners Measure 1964, s 2 (1) (b).

5 Church Commissioners Measure 1947, s 5 (4) (b); Church Commissioners Measure 1964, s 2 (1) (b).

6 As to the General Purposes Committee and the Assets Committee, see PARAS 382, 383 post.

7 Church Commissioners Measure 1947, s 5 (4) (a), (b); Church Commissioners Measure 1964, s 2 (1) (b).

8 Church Commissioners Measure 1947, s 5 (4) (c); Church Commissioners Measure 1964, s 2 (1) (b).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

372 Board of Governors' powers

TEXT AND NOTES 3-8--1947 Measure s 5(4) amended, to refer now to the Audit Committee instead of the General Purposes Committee: National Institutions Measure 1998 Sch 4 para 3.

NOTE 7--Commissioners must constitute a majority of any further committee appointed by the Board: 1947 Measure s 5(4A), added by 1998 Measure Sch 4 para 3.

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373. General meetings of the Church Commissioners.

In every financial year¹, as soon as it is convenient after the audit of the Church Commissioners' accounts for the preceding financial year², the commissioners must hold an annual general meeting for the purpose of:

- 6 (1) considering the annual report and accounts³ and passing, if thought fit, any resolutions with respect to them⁴;
- 7 (2) considering any other matters which may be brought before the meeting by the Board of Governors or which the Archbishop of Canterbury, upon a request submitted to the secretary by any commissioner, may have authorised the secretary to include in the notices of business to be considered⁴;
- 8 (3) appointing, every third year, members of the Board of Governors⁵; and
- 9 (4) considering and, if thought fit, adopting the recommendations of the Board of Governors as to the allocation of such money as the board may report to be available⁶.

The Archbishop of Canterbury may call such other general meetings of the commissioners as he deems necessary⁷. If ten or more commissioners give the secretary notice in writing that they desire a meeting to be called to consider matters specified in the notice the archbishop must call a meeting as soon as is reasonably practicable⁷.

Due notice of intended meetings and the proposed business must be posted to all commissioners⁸, but their proceedings⁹ are not invalidated by any vacancy in the membership of the commissioners, nor by any defect in the qualification, appointment or nomination of any member¹⁰.

If present at a general meeting the Archbishop of Canterbury is chairman; if he is not present the commissioners must elect one of their number to act as chairman¹¹.

1 The commissioners' financial year begins on 1st April: Church Commissioners Measure 1947, s 10 (1).

2 See *ibid* s 4 (3).

3 See PARAS 376-378 post.

4 Church Commissioners Measure 1947, s 4 (1), (2) (a).

5 *Ibid* s 4 (1), (2) (b). See PARA 368 ante.

6 *Ibid* s 4 (1), (2).

7 *Ibid* s 4 (1), (4).

8 *Ibid* s 4 (5). Twenty-eight days' notice of the meeting and ten days' notice of the business is required: s 4 (5).

9 The provision regarding validity of the commissioners' proceedings applies also to proceedings of the Board of Governors or a committee: see *ibid* Sch. 4 para 1.

10 *Ibid* s 7 (1), Sch. 4 para 1.

11 Ibid s 4 (1).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

373 General meetings of the Church Commissioners

TEXT AND NOTE 1--The commissioners' financial year is to begin on 1 January, or such other date as they may determine in general meeting: 1947 Measure s 10(1); Church of England (Miscellaneous Provisions) Measures 1978 s 3; National Institutions Measure 1998 Sch 4 para 6.

TEXT AND NOTE 5--1947 Acts 4(2)(b) repealed: 1998 Measure Sch 4 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iii) Church Commissioners' Functions and Proceedings/374. Procedure at meetings of the Church Commissioners.

374. Procedure at meetings of the Church Commissioners.

Every question at a meeting of the Church Commissioners¹ must be decided by a majority of votes of members present and voting on that question, and in the case of equality of votes the member presiding has a second or casting vote².

Minutes of the commissioners' proceedings³ signed by the member appearing to be the person presiding are to be received in evidence without further proof⁴. Until the contrary is proved, a meeting in respect of which minutes have been so signed is to be deemed to have been duly convened and held⁵.

Subject to the foregoing the commissioners may regulate their own procedure and at any annual general meeting may make, vary and revoke standing orders for the purpose⁵.

1 The provision regarding the method of deciding questions at meetings applies also to meetings of the Board of Governors or a committee: see the Church Commissioners Measure 1947, s 7 (1), Sch. 4 para 5.

2 Ibid Sch. 4 para 5. If any annual general meeting so decides, the commissioners to serve on the Board of Governors may be chosen by ballot or by a postal vote made within fourteen days after the meeting: Sch. 4 para 5 proviso; Church Commissioners Measure 1964, s 2 (1) (f).

3 The provisions regarding minutes of the commissioners' proceedings apply to minutes of the proceedings of the Board of Governors: see the Church Commissioners Measure 1947, Sch. 4 para 6.

4 Ibid Sch. 4 para 6.

5 Ibid s 7 (2) (a).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iii) Church Commissioners' Functions and Proceedings/375. Meetings of the Board of Governors.

375. Meetings of the Board of Governors.

The Archbishop of Canterbury is chairman of the Board of Governors, and if he is not present such member as the members present may elect acts as chairman¹. The board may make, vary and revoke standing orders for regulating its procedure or the procedure of any of its committees, and subject to any such standing orders the board and any such committee may regulate their own procedure². General provisions applicable to the meetings of the Church Commissioners, which have already been described, apply to meetings of the board or its committees³.

The like notice of the business to be considered at a meeting of the board as is given to members of the board must be given also to diocesan bishops who are not members of it⁴.

1 Church Commissioners Measure 1947, s 5 (2).

2 Ibid s 7 (2) (b).

3 See PARA 373 text to note 10 ante (validity of proceedings) and PARA 374 ante (decisions by voting; minutes).

4 Church Commissioners Measure 1947, s 5 (5).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

375 Meetings of the Board of Governors

TEXT AND NOTE 1--A member may be elected to act as chairman in the Archbishop's absence at any meeting to be held during the following period of 12 months: 1947 Measure s 5(2); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 4.

TEXT AND NOTE 4--1947 Measure s 5(5) repealed: National Institutions Measure 1998 Sch 4 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iii) Church Commissioners' Functions and Proceedings/376. Finance.

376. Finance.

The Church Commissioners are required to keep a general fund¹ and, subject to certain exceptions², they must carry all income received in respect of property and funds held by them into this general fund and discharge out of it all trusts and commitments to which that income, or any part of it, is subject and all expenses and obligations falling upon the commissioners in the due discharge of their functions³. Any balance from time to time remaining is available for any purpose for which the surplus of the common fund of the Ecclesiastical Commissioners or of the corporate fund of Queen Anne's Bounty would have been available⁴.

1 Church Commissioners Measure 1947, s 10 (4). See also PARA 1234 post.

2 See note 3 infra.

3 Church Commissioners Measure 1947, s 10 (6). On the establishment of the fund in 1948, balances on income account from the common fund of the Ecclesiastical Commissioners and from the corporate fund of Queen Anne's Bounty were transferred to it (s. 10 (4), but any trust or other fund previously maintained as a separate fund by either of these authorities was required to be continued and maintained as a separate fund (s. 10 (5)), although funds which had been maintained by the two authorities for the same objects or purposes might be amalgamated (s. 10 (5) proviso).

4 Ibid s 10 (6). As to Queen Anne's Bounty and the Ecclesiastical Commissioners, see PARAS 361, 362 ante.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

376 Finance

TEXT AND NOTES--As to the duty of the Church Commissioners to make payments out of the General Fund for distribution by the Archbishops' Council see PARA 427B.

TEXT AND NOTES 1-3--This is subject to the Pensions Measure 1997 s 7 (see PARA 739), which relates to the use of capital funds: 1947 Measure s 10(6); 1997 Measure s 10, Sch 1 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iii) Church Commissioners' Functions and Proceedings/377. Accounts.

377. Accounts.

The Church Commissioners must keep such accounts as are required for the due performance of their functions¹. These accounts include the capital and income accounts of the Diocesan Stipends Fund Kept by the commissioners for each diocese², and a Diocesan Pastoral Account kept by them for each diocese³.

The accounts must be audited in each year in such manner and by such person as the Treasury may direct⁴.

1 Church Commissioners Measure 1947, s 11 (1). As to the commissioners' functions, see PARA 371 ante, 1238 post.

2 See the Diocesan Stipends Fund Measure 1953, s 1, and PARA, 1235 post.

3 See the Pastoral Measure 1968, ss 77, 78, and PARA 1236 post.

4 Church Commissioners Measure 1947, s 11 (2). The auditor's report is deemed to form part of the accounts for the purpose of presentation to the commissioners and transmission to the Home Secretary and to the Secretary General of the General Synod: ss 11 (2), 12; Synodical Government Measure 1969, s 2 (2).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

377 Accounts

TEXT AND NOTES--The functions of the Home Secretary under the 1947 Measure s 12(2) have been transferred to the Lord Chancellor: Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500.

TEXT AND NOTE 2--The duties of the Church Commissioners to keep two accounts for the diocesan stipends fund of a diocese are transferred to the diocesan board of finance of the diocese: Church of England (Miscellaneous Provisions) Measure 2000 s 1. 1953 Measure s 1 substituted accordingly: 2000 Measure Sch 2 para 2.

NOTE 3--Now Pastoral Measure 1983 ss 77, 78 (s 77 amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 6).

TEXT AND NOTE 4--Treasury direction no longer required: 1947 Measure s 11(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 s 2(c)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iii) Church Commissioners' Functions and Proceedings/378. Annual report.

378. Annual report.

As soon as possible after the close of every financial year¹ the Board of Governors must prepare a report of the work and proceedings of the Church Commissioners during that year and present the report and accounts for that year to the commissioners at their annual general meeting². Within thirty days after the annual general meeting the secretary must transmit the report, the accounts and any resolution referring to them passed by the commissioners, to the Home Secretary³ and the Secretary General of the General Synod⁴. The Home Secretary must lay these documents before both Houses of Parliament⁵ and the Secretary General of the General Synod must lay them before the synod⁶.

1 As to the commissioners' financial year, see PARA 373 note 1 ante.

2 Church Commissioners Measure 1947, s 12 (1).

3 Ibid s 12 (2).

4 Ibid s 12 (3); Synodical Government Measure 1969, s 2 (2).

5 Church Commissioners Measure 1947, s 12 (2).

6 Ibid s 12 (3); Synodical Government Measure 1969, s 2 (2).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

378 Annual report

TEXT AND NOTES--The functions of the Home Secretary under the 1947 Measure s 12(2) have been transferred to the Lord Chancellor: Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iv) Church Estates Commissioners/379. Mode and terms of appointment.

(iv) Church Estates Commissioners

379. Mode and terms of appointment.

The Church Estates Commissioners are three in number: the First and Second¹ Church Estates Commissioners are appointed by the Crown; the Third Church Estates Commissioner is appointed by the Archbishop of Canterbury². The First and Second Church Estates Commissioners must be lay members of the Church of England, but the archbishop may appoint any member of the church as the Third Church Estates Commissioner³. The commissioners hold office during the pleasure of the Crown and the archbishop for the time being respectively, and further commissioners may be appointed whenever a vacancy occurs⁴.

Salaries and pensions, fixed by the Board of Governors, are payable out of the general fund of the Church Commissioners to the First and Third Church Estates Commissioners⁵. In practice the Second Church Estates Commissioner is always a member of the House of Commons⁶.

1 As to the second Church Estates Commissioner, see note 6 infra.

2 Ecclesiastical Commissioners Act 1850, s 1; Church Property (Miscellaneous Provisions) Measure 1960, s 19 (1). Publication in the London Gazette of the notice of the appointment of a commissioner is evidence of the fact: Episcopal and Capitular Estates Act 1859, s 2.

3 Ecclesiastical Commissioners Act 1850, s 1. A lay commissioner must make a declaration that he is a member of the Church of England before acting in connection with the business of the commissioners: s 4; Church Commissioners Measure 1947, s 1 (2), Sch. 1, (2) PARA 6. See also PARA 380 text and note 8 post.

4 Ecclesiastical Commissioners Act 1850, s 1.

5 Ibid s 2; Ecclesiastical Commissioners (Powers) Measure 1938, s 9; Church Commissioners Measure 1947, s 6 (6); Church Property (Miscellaneous Provisions) Measure 1960, ss 19 (1), 20; Church Commissioners Measure 1964, s 3. Treasury approval is required for the amount of the salaries payable: Ecclesiastical Commissioners (Powers) Measure 1938, s 9.

6 The prohibition against a member of the House of Commons holding an office of profit under the Crown does not apply, because the Second Church Estates Commissioner does not in fact receive an emolument. There is a constitutional convention that he is nominated by the government of the day, and that his appointment lapses on a change of government. See further PARLIAMENT vol 78 (2010) PARA 905 et seq.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

379 Mode and terms of appointment

NOTE 2--1859 Act s 2 now Ecclesiastical Commissioners Act 1850 s 1(2) (which preserves the effect of the 1859 Act).

NOTE 5--1960 Measure s 20 amended: Church Commissioners (Miscellaneous Provisions) Measure 1975 s 2, Church of England (Miscellaneous Provisions) Measure 2005 s 5. 1964 Measure s 3 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(iv) Church Estates Commissioners/380. Church Estates Commissioners' functions.

380. Church Estates Commissioners' functions.

The statutory functions of the Church Estates Commissioners formerly included the holding of property and the duty of acting as joint treasurers of the Church Commissioners, but, their statutory functions are now defined¹ chiefly in terms of their membership of the Board of Governors², of the General Purposes Committee³ and of the Assets Committee⁴. The three commissioners are members of the Board of Governors⁵ and of the General Purposes Committee⁶; the First Church Estates Commissioner is a member of the Assets Committee⁷; and the Third Church Estates Commissioner is a member of the Lower House of the Convocation of Canterbury if he is a clergyman⁸.

1 See the Church Property (Miscellaneous Provisions) Measure 1960, s 19 (2), (5) (whereby all land vested in the First Church Estates Commissioner and stocks, funds and securities held by the Church Estates Commissioners were transferred to the Church Commissioners); and the Church Commissioners Measure 1964, s 1 (which by substituting the Church Commissioners Measure 1947, s 6 (as originally enacted), had the effect of abolishing the designation of the Church Estates Commissioners as joint treasurers of the Church Commissioners).

2 See PARAS 368, 372 ante.

3 See PARAS 381, 382 post.

4 See PARAS 381, 383 post.

5 See PARA 368 ante.

6 Church Commissioners Measure 1947, s 6 (1) (a); Church Commissioners Measure 1964, s 1.

7 Church Commissioners Measure 1947, s 6 (1) (b); Church Commissioners Measure 1964, s 1. The First Church Estates Commissioner is the chairman of each such committee: Church Commissioners Measure 1947, s 6 (1) (c); Church Commissioners Measure 1964, s 1. The Second Church Estates Commissioner is entitled to attend and speak at the meetings of every committee constituted by or under the Church Commissioners Measure 1947 of which he is not a member; and every Church Estates Commissioner is entitled to receive the papers of every such committee of which he is not a member: Church Commissioners Measure 1947, s 6 (5); Church Commissioners Measure 1964, s 1.

8 Revised Canons Ecclesiastical, Canon H2 para 1 (g) (Canterbury) (added by Amending Canon No. 2).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

380 Church Estates Commissioners' functions

TEXT AND NOTES 3-6--As to the replacement of the general Purposes Committee by the Audit Committee, and the re-definition of the membership of the Assets Committee, see PARA 381. The First Church Estates Commissioner is not an ex officio member of the Audit Committee.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(v) General Purposes Committee; Assets Committee/381. Constitution of and procedure at committees.

(v) General Purposes Committee; Assets Committee

381. Constitution of and procedure at committees.

There are two statutory committees, the General Purposes Committee and the Assets Committee¹. The General Purposes Committee consists of the three Church Estates Commissioners² and from eight to ten other Church Commissioners, appointed by the Board of Governors³ for three years, of whom at least two are diocesan bishops, at least three are other clerks in holy orders and at least three are laymen⁴. The Assets Committee consists of the First Church Estates Commissioner, one Church Commissioner being a clerk in holy orders, appointed for three years by the Board of Governors, and from three to five lay Church Commissioners, appointed for three years by the Archbishop of Canterbury⁵.

In each committee the First Church Estates Commissioner is the chairman and a deputy chairman is elected annually⁶. Each committee may regulate its own procedure and may from time to time make, vary and revoke standing orders for the purpose⁷. Subject to that, the provisions already described relating to the validity of proceedings of the Church Commissioners⁸ and voting at meetings of the commissioners⁹ apply to the General Purposes Committee and the Assets Committee¹⁰.

1 These two committees were established by the Church Commissioners Measure 1964, s 1, to replace the Estates and Finance Committee which had been established by the Church Commissioners Measure 1947, s 6 (1) (as originally enacted).

2 As to the Church Estates Commissioners, see PARA 379 ante.

3 As to the Board of Governors, see PARA 368 ante.

4 Church Commissioners Measure 1947, s 6 (1) (a); Church Commissioners Measure 1964, s 1; Church Commissioners Measure 1970, s 1.

5 Church Commissioners Measure 1947, s 6 (1) (b); Church Commissioners Measure 1964, s 1; Church Commissioners Measure 1970, s 1.

6 Church Commissioners Measure 1947, s 6 (1) (c); Church Commissioners Measure 1964, s 1.

7 Church Commissioners Measure 1947, s 7 (2) (c); Church Commissioners Measure 1964, s 2 (1) (c).

8 See PARA 373. ante.

9 See PARA 374 ante.

10 Church Commissioners Measure 1947, s 7 (1).

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

381 Constitution of and procedure at committees

TEXT AND NOTES 1-6--General Purposes Committee replaced by Audit Committee: 1947 Measure s 6(1) (substituted by the National Institutions Measure 1998 Sch 4 para 4(a); 1947 Measure s 6(1)(b) amended by the Church of England (Miscellaneous Provisions) Measure 2005 s 2(a)).

The Audit Committee consists of between four and six persons appointed by the Board for three years, of whom at least one must be an elected Commissioner and at least two must be persons who are not Commissioners: 1947 Measure s 6(1)(d). The Chairman is appointed by the Board with the agreement of the Archbishop of Canterbury: s 6(1)(e). The Church Estates Commissioners, the chairman of the Board and the acting chairman of the Board are not eligible for membership of the Committee: s 6(1)(f).

The Assets Committee now consists of the First Church Estates Commissioner, two Commissioners being clerks in Holy Orders (at least one being a Commissioner elected by the House of Clergy of the General Synod) appointed for three years by the Board and not less than four nor more than six lay Commissioners appointed for three years by the Archbishop of Canterbury (at least one being a Commissioner elected by the House of Laity of the General Synod) being persons who in his opinion are well qualified to assist in the management of the assets of the Commissioners: 1947 Measure s 6(1)(a). The First Church Estates Commissioner is the chairman of the Assets Committee and a deputy chairman must be elected annually; if present, he acts as chairman at any meeting at which the chairman is not present: s 6(1)(b). If a member appointed by the Board ceases to have the qualifications by virtue of which he was appointed, he vacates his appointment: s 6(1)(c).

NOTE 7--Reference to the General Purposes Committee is now to the Audit Committee: 1947 Measure s 7(2)(c) (amended by the 1998 Measure Sch 4 para 5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(v) General Purposes Committee; Assets Committee/382. General Purposes Committee's functions.

382. General Purposes Committee's functions.

The General Purposes Committee must observe any general rules made for its direction and guidance by the Board of Governors¹. Subject to that, the committee has certain statutory functions², which may be described under two heads. First, it is required to consider and make reports on various matters³ to the Board of Governors including, in particular, the application and distribution of such sums as the board may have determined to be available⁴ and to act on behalf of the board when authorised by the board to do so⁵.

Secondly, the committee is required to act on behalf of, and in the name of, the Church Commissioners in matters relating to the appointment, terms of service, dismissal and direction of the commissioners' officers (other than the secretary⁶), solicitors and agents⁷, and in matters relating to control over expenses of administration⁷; and also in matters which, in the committee's opinion, are urgent⁸, other than matters assigned or referred to any other committee⁸.

1 Church Commissioners Measure 1947, s 6 (2); Church Commissioners Measure 1964, s 1. As to the Board of Governors, see PARA 372 ante.

2 'Functions' include powers and duties: Church Commissioners Measure 1947, s 18 (1).

3 Ibid s 6 (2) (a), (b), (c); Church Commissioners Measure 1964, s 1.

4 Church Commissioners Measure 1947, s 6 (2) (a); Church Commissioners Measure 1964, s 1.

5 Church Commissioners Measure 1947, s 6 (2) (c); Church Commissioners Measure 1964, s 1.

6 The secretary is appointed by the Church Commissioners at a general meeting: Church Commissioners Measure 1947, s 8 (1).

7 Ibid s 6 (2) (d); Church Commissioners Measure 1964, s 1. The committee has no power under this provision in relation to solicitors and agents employed solely in connection with the management of assets: Church Commissioners Measure 1947, s 6 (2) (d); Church Commissioners Measure 1964, s 1. The General Purposes Committee is also required to make rules with respect to the superannuation benefits of the commissioners' officers (Church Commissioners Measure 1947, s 17 (1); Church Commissioners Measure 1964, s 2 (1) (d); Superannuation Act 1972, s 29 (1), Sch. 6 para 21); but there is a saving for previous rules made by the former Estates and Finance Committee (Church Commissioners Measure 1964, s 6 (2)).

8 Church Commissioners Measure 1947, s 6 (2) (e); Church Commissioners Measure 1964, s 1.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

382 [Audit] Committee's functions

TEXT AND NOTES--General Purposes Committee replaced by Audit Committee: see PARA 382. 1947 Measure s 6(2) repealed: National Institutions Measure 1998 Sch 4 para 4(b).

The Audit Committee has the following functions: (1) reviewing the commissioners' accounting policies and practices, their annual accounts and any reports made and advice given to the commissioners by the auditor; (2) keeping under review the effectiveness of the commissioners' internal control system; (3) considering any representations made to it; (4) appointing, with the approval of the Board, an auditor and directing the manner in which the audit is undertaken, including ensuring that the requirements of generally accepted auditing standards are met; (5) reporting to those commissioners who are not members of the Board on any matter relating to the functions and business of the commissioners which causes the committee grave concern and about which the Board has been unable to satisfy the committee: 1947 Measure s 6(3B) (added by the National Institutions Measure 1998 Sch 4 para 4(c); and amended by the Church of England (Miscellaneous Provisions) Measure 2005 s 2(b)).

The commissioners' officers must supply the Audit Committee with such information in their possession as it may require to enable it to exercise its functions: 1947 Measure s 6(3C), as so added.

NOTE 7--Function of making rules in relation to superannuation now transferred to the Board of Governors: 1947 Measure s 17(1) (amended by the 1998 Measure Sch 4 para 7; and the Statute Law (Repeals) Act 2004).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(v) General Purposes Committee; Assets Committee/383. Assets Committee's functions.

383. Assets Committee's functions.

Subject to any general rules made by the Board of Governors¹, the Assets Committee² has the following statutory functions. First, it has an exclusive power and duty to act on behalf of and in the name of the Church Commissioners in all matters relating to the management of those assets of the commissioners the income of which is carried into their general fund, including power to sell, purchase, exchange and let land and make, realise and change investments³. Secondly, the committee has a duty to recommend to the Board of Governors, from time to time, what sums are available for application or distribution by the commissioners, and what sums should be appropriated to reserve and for reinvestment⁴. Thirdly, it has a duty to consider and report on any matter referred to it by the Board of Governors, and to act on behalf of the board in any matter in which it is authorised by the board so to act⁵.

1 Church Commissioners Measure 1947, s 6 (3); Church Commissioners Measure 1964, s 1. As to the Board of Governors, see PARA 372 ante.

2 References in any Act or Measure other than the Church Commissioners Measure 1947 to the Estates and Finance Committee (see PARA 381 note 1 ante) are to be construed as references to the Assets Committee: Church Commissioners Measure 1964, s 2 (4). Thus, the committee's consent is required before a bishop can exercise the powers conferred on landlords in respect of charging agricultural land: Agricultural Holdings Act 1948, s 88 (1): see PARA 1151 post.

3 Church Commissioners Measure 1947, s 6 (3) (a); Church Commissioners Measure 1964, s 1.

4 Church Commissioners Measure 1947, s 6 (3) (b); Church Commissioners Measure 1964, s 1.

5 Church Commissioners Measure 1947, s 6 (3) (c); Church Commissioners Measure 1964, s 1.

UPDATE

361-383 The Church Commissioners

As to the establishment of the Archbishops' Council and the transfer of functions to it (including certain functions of the Church Commissioners), see PARAS 427A-427C.

383 Assets Committee's functions

TEXT AND NOTES--Before making any recommendation under the 1947 Measure s 6(3)(b) the Assets Committee must obtain the advice of an actuary (as defined) as to the likely effect on the commissioners' financial position as a whole, and must have regard to that advice, a summary of which must be included in their annual report under s 12: s 6(3A), inserted by the Pensions Measure 1997 s 10, Sch 1 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(v) General Purposes Committee; Assets Committee/383A. Appointments Committee.

383A. Appointments Committee.

The General Synod must appoint or provide by Standing Orders for the appointment of a committee known as the Appointments Committee of the Church of England, the membership of which consists of persons who are members of the General Synod, at least one third being members of the Archbishops' Council: National Institutions Measure 1998 s 10(a). As to the Archbishops' Council see PARA 427A et seq.

A number of functions have been transferred to the Appointments Committee: see SI 1998/1715. Those functions are: (1) the appointment of chairman of meetings under the Synodical Government Measure 1969 Sch 2 para 4(2) (see PARA 413); (2) functions relating to the appointment of the Dioceses Commission under the Dioceses Measure 1976 s 1 (see PARA 457A); (3) selection of the panel for members of a tribunal to hear appeals under the Ordination of Women (Financial Provisions) Measure 1993 s 10 (see PARA 657C.3); (4) certain functions under the Incumbents (Vacation of Benefices) Measure 1977 s 18 (see PARA 733H); (5) appointment of members of the Patronage (Procedure) Committee under the Patronage (Benefices) Measure 1986 s 38 (see PARA 783A.11); (6) functions relating to fees payable to legal officers under the Ecclesiastical Fees Measure 1986 s 4; (7) appointment of a member of the rule committee under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 25(2) (see PARA 1296A); (8) appointment of the members of the legal aid commission under the Church of England (Legal Aid) Measure 1994 s 1 (see PARA 1305).

In addition the Appointments Committee nominates members of appeal panels (see PARA 426), and is consulted by the Archbishops on the appointment of members to the Archbishops' Council (as to which see PARA 427A).

A person may not be a member (or stand for membership) of more than one of the following bodies at any one time, namely: the Archbishops' Council (see PARA 427A), the Church Commissioners, the Pensions Board, the Appointments Committee or the Business Committee (see PARA 383B): 1998 Measure s 11.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(3) THE CHURCH COMMISSIONERS/(v) General Purposes Committee; Assets Committee/383B. Business Committee.

383B. Business Committee.

The General Synod must appoint or provide by Standing Orders for the appointment of a committee known as the Business Committee of the General Synod, the membership of which consists of persons who are members of the General Synod: National Institutions Measure 1998 s 10(b).

A number of functions have been transferred to the Business Committee: see SI 1998/1715. Those functions are: (1) functions relating to the rules of procedure of a tribunal to hear appeals under the Ordination of Women (Financial Provisions) Measure 1993 s 10 (see PARA 657C.3); (2) certain functions under the Incumbents (Vacation of Benefices) Measure 1977 s 18 (see PARA 733H); (3) functions relating to rules of procedure made by the Patronage (Procedure) Committee under the Patronage (Benefices) Measure 1986 s 38, Sch 1 (see PARA 783A.11); (4) functions relating to parochial fees orders and orders prescribing fees payable to legal officers under the Ecclesiastical Fees Measure 1986 ss 2(3), 5(4), 6(4) (see PARAS 1198, 1204); (5) functions relating to the rule committee under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 27(3) (see PARA 1296A).

The Business Committee has the right to introduce legislation to the General Synod: National Institutions Measure 1998 s 9(a) (see PARA 399).

In addition, the Business Committee now approves rules for the conduct of elections to the General Synod (see PARA 422), and prescribes matters in connection with the conduct of the annual meeting (see PARA 564).

A person may not be a member (or stand for membership) of more than one of the following bodies at any one time, namely: the Archbishops' Council (see PARA 427A), the Church Commissioners, the Pensions Board, the Appointments Committee (see PARA 383A) or the Business Committee: 1998 Measure s 11.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/384. Legislative powers before 1970.

(4) SYNODICAL GOVERNMENT

384. Legislative powers before 1970.

From the Reformation until 1920 it was usually necessary, when legislation was required in matters concerning the Church of England, to have direct recourse to Parliament. Although the convocations of the clergy in the provinces of Canterbury and York had the power, recognised by Parliament¹, to legislate by canon in ecclesiastical matters, this power was strictly limited in scope and was indeed dormant for a large part of the period in question.

By the Church of England Assembly (Powers) Act 1919 an entirely new body, including representatives of the laity, was created, with extensive powers of legislation in matters concerning the Church of England. This was the National Assembly of the Church of England, or the Church Assembly².

The constitution and functions of the Church Assembly were set out in an appendix to addresses presented to the King by the Convocations of Canterbury and York in May 1919, and it was upon the Church Assembly so constituted that powers in regard to legislation were conferred³. These powers were subject to the control and authority of the Sovereign and the two Houses of Parliament, and were concurrent with the vocations' power to make canons⁴.

1 Submission of the Clergy Act 1533, ss 1, 3. As to the convocations, see PARA 442 et seq post. As to canons, see PARAS 305, 308 ante.

2 Church of England Assembly (Powers) Act 1919, s 1 (1). See also the Interpretation Measure 1925, s 3, by virtue of which in Measures passed subsequently, unless a contrary intention appears, 'Church Assembly' means the National Assembly of the Church of England as provided for by the constitution. This entirely new legislative body came into being partly because pressure of business was making it increasingly difficult for Parliament to find time to deal with church matters and partly to satisfy the strong feeling that there should be a body consisting exclusively of churchmen to deal with church matters upon which the laity should be adequately represented.

3 Church of England Assembly (Powers) Act 1919, preamble. As to the addresses and the appendix, see 7 Halsbury's Statutes (3rd Edn) 51-81.

4 Church of England Assembly (Powers) Act 1919, preamble.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/385. Establishment of the General Synod.

385. Establishment of the General Synod.

In 1969 it was decided to bring to an end the dual exercise of functions by the Church Assembly and the convocations and to provide a system of synodical government for the Church of England¹. By the Synodical Government Measure 1969 the Convocations of Canterbury and York were authorised to make provision by canon for the vesting of their own functions, authority, rights and privileges in the Church Assembly²; and by the same enactment it was provided that the Church Assembly should, from the date of this transfer of functions, be reconstituted and renamed as the General Synod of the Church of England³. The functions transferred to the General Synod, which included the power to legislate by canon⁴, were henceforth to be exercisable for the Church of England as a whole, instead of being exercisable provincially⁵. Notwithstanding this substantial transfer of functions, the convocations were to continue in existence, with modified functions when sitting separately for their provinces⁶; they would, moreover, be component parts of the General Synod⁷. The proposed canon⁸, vesting functions of the convocations in the General Synod and modifying the functions of the convocations, was made in the form authorised by the Measure, and after receiving the royal assent came into operation on 4th November 1970, which was the date of the establishment of the General Synod⁹.

1 See the Synodical Government Measure 1969, preamble. 'Synodical government' is not to be interpreted as meaning that all the functions of church government are concentrated in, or subject to the control of, the General Synod; account must be taken, not only of the royal supremacy and of the ultimate legislative authority of Parliament, but also of the authority and powers exercised independently of the General Synod by the bishops, the ecclesiastical courts and the Church Commissioners. The system of church government involves a distribution of functions, and within that system the role of the General Synod is that of a deliberative and legislative body: see PARA 398 post. As to the introduction of synodical government at diocesan and deanery levels, see PARA 386 post. As to the authority of the bishops, see PARA 389 et seq post; as to the ecclesiastical courts, see PARA 1272 et seq post; and as to the Church Commissioners, see PARA 363 et seq ante.

The Revised Canons Ecclesiastical, Canon A6, provides that the government of the Church of England under the Queen by archbishops, bishops, deans, provosts, archdeacons and the rest of the clergy and of the laity that bear office in the church is not repugnant to the Word of God.

2 Synodical Government Measure 1969, preamble, s 1 (1) (a), Sch. 1.

3 Ibid s 2 (1). References to the Church Assembly in various enactments are to be construed accordingly: s 2 (2).

4 Ibid s 1 (3), (5), Sch. 1 para 1. See PARA 400 post.

5 Ibid s 1 (2). This does not prevent the General Synod from making different provisions, when appropriate, for the two provinces: s 1 (2).

6 Ibid s 1 (1) (b), Sch. 1 paras 2-4: see PARA 442 et seq post.

7 See PARA 390 post.

8 The Revised Canons Ecclesiastical, Canon H1 (added by Canon promulgated 7th October 1969).

9 Synodical Government Measure 1969, s 1 (1), Sch. 1. As to the appointed day, see the London Gazette, 16th June 1970.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/386. Provisions respecting dioceses, deaneries and parishes.

386. Provisions respecting dioceses, deaneries and parishes.

In addition to establishing the General Synod, the Synodical Government Measure 1969¹ provided for the creation of deanery synods and diocesan synods². These were new bodies, replacing the former diocesan conferences³ and, where they existed, ruridecanal conferences⁴. Provision was also made for certain changes in respect of parochial church councils⁵.

1 Synodical Government Measure 1969, s 4 (1).

2 Ibid s 5 (1). As to the constitution and proceedings of these bodies, see the Church Representation Rules, Part III (rr. 19-23), IV (rr. 24-28), contained in the Synodical Government Measure 1969, Sch. 3, and PARA 503 et seq, 527 et seq post.

3 Ibid s 4 (7).

4 Ibid s 5 (2).

5 Ibid s 6. As to parochial church councils, see the Church Representation Rules, rr 12-18, and PARA 568 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/387. Transitional provisions.

387. Transitional provisions.

Transitional provisions were enacted with respect to matters arising on the transfer of functions from the convocations, the reconstitution of the Church Assembly as the General Synod, the changes affecting diocesan and ruridecanal conferences, and the coming into operation of the Church Representation Rules¹. In particular, any existing canons, Acts of Convocation or regulations made by the convocations in exercise of those functions², and any orders, regulations or rules of the Church Assembly³ were to continue in force as if made by the General Synod. There were corresponding provisions in respect of the changes affecting diocesan and ruridecanal conferences⁴ and in connection with the repeal of the Rules for the Representation of the Laity⁵. Any difficulty arising on these transitional provisions was to be referred to the Archbishops of Canterbury and York who had power to give any directions they considered expedient to remove the difficulty⁶.

1 See the Synodical Government Measure 1969, s 8, Sch. 4.

2 Ibid s 4, Sch. 4 para 1 (1).

3 Ibid Sch. 4 para 2 (1).

4 See ibid Sch. 4 para 3.

5 Ibid Sch. 4 para 4, (1). These rules were contained in the Church of England Assembly (Powers) Act 1919, Schedule; Representation of the Laity Measure 1956, s 1, Schedule (repealed).

6 Synodical Government Measure 1969, Sch. 4 para 6 (1).

UPDATE

387 Transitional provisions

TEXT AND NOTES 4-6--1969 Measure Sch 4 para 3 amended, PARAS 4(1), 6 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/388. Application to the Isle of Man and the Channel Islands.

388. Application to the Isle of Man and the Channel Islands.

The provisions of the Synodical Government Measure 1969 which relate to the establishment, constitution and functions of the General Synod¹ extend to the Isle of Man². The remainder of the Measure, including the provisions relating to diocesan and deanery synods and the Church Representation Rules, may, by Act of Tynwald, be extended to the Isle of Man with such exceptions, adaptations and modifications, if any, as may be specified in such Act³.

The Synodical Government Measure 1969 may be applied to the Channel Islands⁴ or either of them by means of a scheme approved by the General Synod and confirmed by Order in Council⁵. In pursuance of this provision the Measure has been applied, with certain variations, to the Channel Islands⁶.

1 Ie the Synodical Government Measure 1969, ss 1-3, Schs. 1, 2, and so much of Sch. 4 as relates to those provisions.

2 Ibid s 9 (3), (4).

3 Ibid s 9 (4).

4 'The Islands' (ie the Channel Islands) means the Island of Jersey, and the Island and Bailiwick of Guernsey and its dependencies: Channel Islands (Church Legislation) Measure 1931, s 1.

5 Synodical Government Measure 1969, s 9 (3), (5); Channel Islands (Church Legislation) Measure 1931, s 2; Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, s 1; see PARA 345 note 3 ante, 402 post. Any scheme so applying the Synodical Government Measure 1969 may provide for such modifications of the Channel Islands (Representation) Measure 1931 and of the Channel Islands (Church Legislation) Measure 1931 as may be necessary or expedient in consequence of the provisions of the Synodical Government Measure 1969: s 9 (5).

6 Synodical Government (Channel Islands) Order 1970, S.I. 1970 No. 1117. The scheme provides that the Synodical Government Measure 1969, ss 1, 2, 3, 4, 5 (3), (4), shall, with certain limitations, apply to the Channel Islands. It provides for modifications of the Channel Islands (Representation) Measure 1931 in relation to ss 4, 6, Schedule. As to Guernsey and Jersey as electoral areas, see PARA 421 post. As to the application of Measures to the Channel Islands, see PARA 402 post.

UPDATE

388 Application to the Isle of Man and the Channel Islands

NOTES 1-3--Omit words ', and so much of Sch 4 as relates to those provisions': 1969 Measure s 9(4) (amended by the Statute Law (Repeals) Act 2004).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(4) SYNODICAL GOVERNMENT/389. Church Representation Rules.

389. Church Representation Rules.

The Church Representation Rules, which are contained in a schedule to the Synodical Government Measure 1969¹, make provision for church electoral rolls², the constitution and proceedings of parochial church councils³, deanery synods⁴ and diocesan synods⁵, for the membership of the House of Laity of the General Synod⁶ and for the methods of electing or choosing persons for membership of those bodies, and for appeals and disqualifications⁷. The rules may at any time be amended by resolution of the General Synod passed by a majority in each House of not less than two-thirds of those present and voting⁸.

In the carrying out of the Church Representation Rules in any diocese, the bishop on the diocese has power (1) to make provision for any matter not provided for in the rules⁹; (2) to appoint a person to do any act in respect of which there has been any neglect or default on the part of any person or body charged with any duty under the rules¹⁰; (3) so far as may be necessary for the purpose of giving effect to the intention of the rules, to extend or alter the time for holding any meeting or election or to modify the procedure laid down by the rules in connection with them¹¹; (4) in any case in which there has been no valid election, to direct a fresh election to be held and to give such directions in connection with it as he may think necessary¹²; and (5) in any case in which any difficulties arise, to give any directions which he may consider expedient for the purpose of removing the difficulties¹³.

No proceedings of any body constituted under the Church Representation Rules are invalidated by any vacancy in the membership of that body or by any defect in the qualification, election or appointment of any members¹⁴.

The rules prescribed necessary forms¹⁵, but no proceedings are invalidated by the use of a different form provided it is to a substantially similar effect as the prescribed form¹⁶.

1 See the Synodical Government Measure 1969, s 7 (1), Sch. 3. The rules have been amended by the Church Representation Rules (Amendment) Resolution 1973, S.I. 1973 No. 1865.

2 See the Church Representation Rules, Part I (rr. 1-4), and PARA 591 et seq post.

3 See *ibid* Part II (rr. 5-18), App. II, and PARA 568 et seq post.

4 See *ibid* Part III (rr. 19-23), and PARA 527 et seq post.

5 See *ibid* Part IV (rr. 24-28), and PARA 503 et seq post.

6 See *ibid* Part V (rr. 29-35), and PARA 418 et seq post.

7 See *ibid* Part VI (rr. 36-38). As to appeals, see r 36, and PARAS 426, 512, 596 post. As to disqualification, see rr 37, 38, and PARAS 420, 507, 510, 531, 566, 570 post.

8 Synodical Government Measure 1969, s 7 (1) proviso. The Statutory Instruments Act 1946 applies to any such resolution as if it were a statutory instrument and as if the Synodical Government Measure 1969 were an Act providing that it should be subject to annulment in pursuance of a resolution of either House of Parliament: s 7 (2). For such a resolution, see note 1 *supra*.

9 Church Representation Rules, r 43 (1) (a).

10 *Ibid* r 43 (1) (b).

11 *Ibid* r 43 (1) (c).

12 Ibid r 43 (1) (d).

13 Ibid r 43 (1) (e). These powers do not enable the bishop to validate anything that was invalid at the time when it was done (r. 43 (2) (a)), or to give any direction that is contrary to any resolution of the General Synod (r. 43 (2) (b)). As to the functions of archbishops under the rules, see PARA 432 post.

14 Ibid r 43 (3).

15 See ibid App. I.

16 Ibid r 43 (4). Any question whether a form is to a substantially similar effect as a prescribed form must be determined by the bishop: r 43 (4).

UPDATE

389 Church Representation Rules

NOTE 1--Rules further amended: SI 1980/178; Diocese in Europe Measure 1980 s 2, Sch 2; SI 1981/959, SI 1981/1650; SI 1984/1039, SI 1984/1040; SI 1989/2094, SI 1989/2095, SI 1994/3118, SI 1995/3243, SI 1999/2112.

NOTE 2--Part I now rr 1-5.

NOTE 3--Part II now rr 6-23.

NOTE 4--Part III now rr 24-29.

NOTE 5--Part IV now rr 30-34.

NOTE 6--Part V now rr 35-42.

NOTE 7--Part VI now rr 43-54.

TEXT AND NOTES 9-16--Rule 43 now r 53; SI 1994/3118. These provisions have effect in the diocese in Europe (see PARAS 316, 455) as if the references to the Church Representation Rules were references to such of them as apply in that diocese: r 53(12); Diocese in Europe Measure 1980 s 2, Sch 2.

TEXT AND NOTE 11--This power may not be exercised in relation to the conduct of the elections referred to in rr 39, 48: r 53(1)(c); SI 1984/1039.

TEXT AND NOTE 12--Head (4) omitted: r 53(1); SI 1989/2094.

NOTE 13--Rule 43(1)(e) renumbered as r 53(1)(d): SI 1989/2094, SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/390. Composition of the General Synod.

(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND

(i) Constitution of the General Synod

390. Composition of the General Synod.

The General Synod of the Church of England¹ consists of the Convocations of Canterbury and York² joined together in a House of Bishops and a House of Clergy and having added to them a House of Laity³. The House of Bishops and the House of Clergy accordingly comprise the Upper and Lower Houses respectively of the convocations, and the House of Laity is elected and otherwise constituted in accordance with the Church Representation Rules⁴. The Archbishops of Canterbury and York are joint presidents⁵, and the provincial registrars are joint registrars⁶, of the General Synod.

1 As to the establishment of the General Synod, see PARA 385 ante.

2 As to the convocations, see PARA 442 et seq post.

3 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 1. In the Interpretation Measure 1925 and in every subsequent Measure, unless a contrary intention appears, 'House of Bishops', 'House of Clergy' and 'House of Laity' mean respectively the Houses of Bishops, Clergy and Laity of the General Synod: Interpretation Measure 1925, s 3; Synodical Government Measure 1969, s 2 (2).

4 Ibid Sch. 2, art. 2; and see PARA 418 et seq post. As to the Church Representation Rules, see PARA 389 ante. As to the elections, see r 30, and PARA 419 post.

5 Synodical Government Measure 1969, Sch. 2, art. 4 (1); Revised Canons Ecclesiastical, Canon C17 para 4 (amended by Amending Canon No. 1). As to the archbishops, see PARA 429 et seq post.

6 Synodical Government Measure 1969, Sch. 2, art. 4 (3). As to the provincial registrars, see PARA 1285 text and note 12 post.

UPDATE

390 Composition of the General Synod

NOTE 4--A person is disqualified from being nominated for election or from continuing to serve as a member of the General Synod if he holds or takes any paid office or employment appointment to which is or may be made or confirmed by the General Synod, the Convocations, the Archbishops' Council, the Central Board of Finance, the Church Commissioners for England (except that such disqualification does not apply to any Commissioner so appointed in receipt of a salary or other emoluments), the Church of England Pensions Board or the Corporation of the Church House: Church Representation Rules r 46A(c) (added by SI 1999/2112).

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391. Legislative Committee.

The General Synod must appoint a Legislative Committee from members of all three Houses, to which must be referred all Measures passed by the synod which it is desired should be given the force of an Act of Parliament¹. It is this committee's duty to take the action required for that purpose in accordance with the procedure prescribed by statute².

The Legislative Committee is not a body to which orders of prohibition or certiorari will lie³.

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 10 (1).

2 Ibid Sch. 2, art. 10 (1). The procedure is prescribed by the Church of England Assembly (Powers) Act 1919; Synodical Government Measure 1969, s 2 (2), Sch. 2, art. 10 (1): see PARA 406 et seq post.

3 *R v Church Assembly Legislative Committee, ex parte Haynes Smith* [1928] 1 KB 411, DC. See **JUDICIAL REVIEW** vol 61 (2010) PARAS 693, 697.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/392. Standing Committee and other bodies; officers.

392. Standing Committee and other bodies; officers.

The General Synod may appoint, or provide by its standing orders for the appointment of, a Standing Committee and such other committees, commissions and bodies, which may include persons who are not members of the synod, and such officers as it thinks fit¹. Each House may appoint, or provide by its standing orders for the appointment of, such committees of its members as it thinks fit².

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 10 (1). The Standing Committee is required to appoint a legal aid committee: Ecclesiastical Jurisdiction Measure 1963, s 59 (2); Synodical Government Measure 1969, s 2 (2): see PARA 1305 post. As to the power to make standing orders, see PARA 414 post. The General Synod has the following advisory committees: the Advisory Council for the Church's Ministry, the Board of Education, the Board for Mission and Unity, and the Board for Social Responsibility. It also has the following permanent commissions: the Canon Law Commission, the Council for the Deaf, the Council for Places of Worship (see PARA 1321 post), the Doctrinal Commission, the Hospital Chaplaincies Council, the Legal Advisory Commission (see PARA 393 post), the Liturgical Commission, and the Prison Chaplaincies Commission.

2 Ibid Sch. 2, art. 10 (3).

UPDATE

392 Standing Committee and other bodies; officers

TEXT AND NOTE 1--1969 Measure Sch 2 art 10 amended, removing reference to Standing Committee: Church of England (Transfer of Functions) Order 1998, SI 1998/1715.

NOTE 1--Ecclesiastical Jurisdiction Measure 1963 s 59 repealed: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 3.

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393. Legal Advisory Commission.

The Legal Advisory Commission of the General Synod is a body of persons learned in ecclesiastical law and in the law of England generally, whose function is to give advice on legal questions referred to it by the General Synod and its boards and councils and also by the Church Commissioners, diocesan authorities and others. There is no specific statutory authority for the existence of this commission, but it has been constituted (formerly under the name of the Legal Board of the Church Assembly) since 1923. The commission submits an annual report to the General Synod in which reference is made to matters of current importance; and volumes containing selected opinions have been published from time to time¹.

¹ The latest such publication is *Opinions of the Legal Board* (5th Edn) (Church Information Office 1973). It is the commission's policy not to advise in any contentious matter unless the facts of the dispute are agreed and referred by both sides: see the *Report on the Church's Legal Officers 1973* (GS 149) p. 6. 'GS' is the prefix given to General Synod papers. Further information is to be found in the *Church of England Year Book*.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/394. Central Board of Finance.

394. Central Board of Finance.

The Central Board of Finance of the Church of England is incorporated as a company limited by guarantee¹. Its chief duty is to act as the financial executive of the General Synod by which most of its members are appointed². The board presents an annual report and budget to the synod, administers the General Synod Fund and the votes voted by the synod, administers the finances of the synod departments, of the church colleges of education scheme, of the Central Fund for Ordination Candidates, and of the pension scheme for lay workers³. The board also raises and administers the Central Church Fund and by its memorandum of association is empowered to perform many other business services for the Church of England. It may acquire and hold real and personal property, may act as a trust corporation, lend and borrow money, acquire copyrights and do all other lawful things incidental to its objects⁴. The board holds a legal aid fund on behalf of the synod⁵.

In particular the board holds an Investment Fund and a Deposit Fund, constituted by specific enactment for the purpose of enabling trustees of charitable trusts whose objects are connected with the work of the Church of England to participate in common investment funds⁶.

1 See the Memorandum of Association of the Central Board of Finance.

2 See the Articles of Association of the Central Board of Finance, arts. 3-9.

3 A useful summary of the functions of the Central Board of Finance is contained in the Church of England Year Book.

4 *Re Barnes, Simpson v Barnes* [1930] 2 Ch 80n, where the Central Board of Finance claimed money bequeathed to 'the Church of England'; the Attorney General disputed the claim as of right, but the money was paid to the board in pursuance of an agreement sanctioned by the court.

5 See PARA 1305 post.

6 See the Church Funds Investment Measure 1958, and PARA 1249 et seq post.

UPDATE

394 Central Board of Finance

NOTES--As to the transfer of officers from the Board see National Institutions Measure 1998 s 6, Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/395. Dissolution of the General Synod.

395. Dissolution of the General Synod.

The General Synod is automatically dissolved on the dissolution of the Convocations of Canterbury and York¹, and comes into being on the calling together of the new convocations². Any boards, commissions, committees or other bodies of the synod may, so far as may be appropriate, and subject to any standing orders or any directions of the synod or of the Archbishops of Canterbury and York, continue their proceedings during the period of the dissolution; and all things may be done by the archbishops or any such bodies or any officers of the synod as may be necessary or expedient for conducting the synod's affairs during the period of dissolution and for making arrangements for the resumption of business by the new synod³.

1 As to the dissolution of the convocation, see PARA 443 post.

2 Synodical Government Measure 1969, ss 1 (4), 2 (1), Sch. 2, art. 3 (2). Pending business does not abate, but may be resumed by the new synod at the stage reached before the dissolution: Sch. 2, art. 3 (3).

3 Ibid Sch. 2, art. 3 (3). A member of the General Synod may continue to act during the period of the dissolution as a member of any board, commission, committee or body of the synod (Sch. 2, art. 3 (4)); but if, being an elected proctor of the clergy or an elected member of the House of Laity, he does not stand for re-election or is not re-elected, his authority so to act will cease with effect from the date on which the election of his successor is announced by the presiding officer (Sch. 2, art. 3 (4) proviso).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/396. Interpretation of the constitution.

396. Interpretation of the constitution.

Any question concerning the interpretation of the constitution of the General Synod must, unless otherwise expressly provided, be referred to and determined by the Archbishops of Canterbury and York¹.

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 12 (2). The constitution is contained in Sch. 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/397. Validity of proceedings.

397. Validity of proceedings.

No proceedings of the General Synod or any of its Houses, boards, commissions, committees or other bodies are invalidated by any vacancy in the membership of the body concerned or by any defect in the qualification, election or appointment of any of its members¹. Any functions exercisable under the constitution of the synod by the Archbishops of Canterbury and York may, during the absence abroad or incapacity through illness of one archbishop or a vacancy in one of the sees, be exercised by the other archbishop alone².

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 12 (3). See also the Church of England Assembly (Powers) Act 1919, s 3 (7); Synodical Government Measure 1969, s 2 (2),

2 Ibid Sch. 2, art. 13. This provision is applicable whether the archbishops are described as such or as presidents of the General Synod: Sch. 2, art. 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(i) Constitution of the General Synod/398. Functions of the General Synod.

398. Functions of the General Synod.

By the terms of its constitution two functions are assigned to the General Synod¹. The first is to consider matters concerning the Church of England and to make provision in respect of them (1) by Measure intended to be given the force and effect of an Act of Parliament²; (2) by canon made in exercise of the power transferred from the convocations to the General Synod³; (3) by such order, regulation or other subordinate instrument as may be authorised by Measure or canon⁴; or (4) by such Act of Synod, regulation or other instrument or proceedings as may be appropriate in cases where provision by or under a Measure or canon is not required⁵.

The second function of the General Synod is to consider and express its opinion on any other matters of religious or public interest⁶.

The effect of these provisions is to limit the functions of the General Synod to those of a legislative and deliberative body. It is not a judicial body⁷, nor has it any general authority to control executive action in the Church of England⁸.

1 See the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 6.

2 Ibid Sch. 2, art. 6 (a) (i): see PARA 399 post.

3 Ibid Sch. 2, art. 6 (a) (ii): see PARA 385 note 4 ante, 400 post. As to the binding force of these canons, see PARA 308 ante.

4 Ibid Sch. 2, art. 6 (a) (iii).

5 Ibid Sch. 2, art. 6 (a) (iv). It is thought that such Acts of Synod will have similar binding force to Acts of Convocation, as to which see PARA 451 note 2 post.

6 Ibid Sch. 2, art. 6 (b). The synod has the right to present addresses to Her Majesty: Sch. 1 para 4 (Revised Canons Ecclesiastical, Canon H1 para 4; this canon was added by Canon promulgated 7th October 1969).

7 The synod is not a body to which orders of prohibition or certiorari will lie: *R v Church Assembly Legislative Committee, ex parte Haynes Smith* [1928] 1 KB 411, DC. See **JUDICIAL REVIEW** vol 61 (2010) PARAS 693, 697.

8 Cf. para 385 note 1 ante. The constitution of the Church Assembly expressly debarred the assembly from exercising any power or performing any function distinctively belonging to the bishops in right of their episcopal office: Church of England Assembly (Powers) Act 1919, Appendix para 15; Synodical Government Measure 1969, s 2 (2). Although this prohibition was not repeated in the constitution of the General Synod, the omission would not seem to justify the conclusion that the synod has any greater powers than those of the Church Assembly in this respect.

UPDATE

398 Functions of the General Synod

TEXT AND NOTES--The Standing Orders of the General Synod must make provision for affording the opportunity to the General Synod to consider reports or budgets laid before it by or with regard to the Archbishops' Council (see PARA 427C), to consider such other matters as may be referred to it by the Council, and to question representatives of the Council in respect of any such report, budget or matter: National Institutions Measure 1998 s 9(b).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/A. IN GENERAL/399. Legislation by Measure.

(ii) Legislation

A. IN GENERAL

399. Legislation by Measure.

The power to legislate by Measure¹, which was conferred upon the Church Assembly by statute², has passed to the General Synod³.

The General Synod may pass Measures relating to any matter concerning the Church of England⁴. A Measure may extend to the amendment or repeal in whole or in part of any Act of Parliament, including the Church of England Assembly (Powers) Act 1919; but a Measure must not make any alteration in the composition or powers or duties of the Ecclesiastical Committee of Parliament⁵, or in the procedure prescribed by Parliament for its own consideration of Measures reported on by the Ecclesiastical Committee⁶. The General Synod must refer to its Legislative Committee⁷ any legislative Measure intended to receive the royal assent and to have effect as an Act of Parliament in accordance with the provisions of the Church of England Assembly (Powers) Act 1919⁸; and the Legislative Committee must take the action required for that purpose in accordance with the procedure prescribed by statute⁸.

1 'Measure' means a legislative Measure intended to receive the royal assent and to have effect as an Act of Parliament in accordance with the provisions of the Church of England (Assembly) Powers Act 1919: see s 1 (5).

2 See the Church of England (Assembly) Powers Act 1919.

3 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 6 (a) (i); see PARA 398 ante.

4 Church of England (Assembly) Powers Act 1919, s 3 (6); Synodical Government Measure 1969, s 2 (2).

5 As to the Ecclesiastical Committee, see PARA 406 post.

6 Church of England (Assembly) Powers Act 1919, ss 3 (6) proviso, 4; Synodical Government Measure 1969, s 2 (2).

7 As to the Legislative Committee, see PARA 391 ante.

8 Synodical Government Measure 1969, Sch. 2, art. 10 (1). As to the action taken by the Legislative Committee, see PARA 406 post.

UPDATE

399 Legislation by Measure

TEXT AND NOTES 4-8--The Standing Orders of the General Synod must permit the introduction of legislation by the Archbishops' Council (see PARA 427A et seq) or the Business Committee (see PARA 383B): National Institutions Measure 1998 s 9(a).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/A. IN GENERAL/400. Legislation by canon.

400. Legislation by canon.

The power to legislate by canon, formerly exercised by the Convocations of Canterbury and York, is now vested in the General Synod¹ and is exercisable for the Church of England as a whole, instead of being exercisable provincially, but without prejudice to the making of different provision, where appropriate, for the two provinces². Canons of the General Synod must be made, promulgated and executed in accordance with the like provisions, and will be subject to the like restrictions and have the like legislative force, as canons formerly made by the convocations³. The royal assent and licence is required to the making, promulgating and executing of these canons; and no canons are to be made or put in execution by the General Synod which are contrary or repugnant to the royal prerogative or the customs, laws or statutes of the realm⁴.

1 Synodical Government Measure 1969, s 1 (1), (3), (5) (a), Sch. 1 para 1, Sch. 2 para 6 (a) (ii). In addition to this general power to make canons concerning the Church of England, the General Synod is specifically authorised to make canons (1) for the amendment of the constitutions of the Upper and Lower Houses of the convocations (see the Convocations of the Clergy Measure 1920, s 1; Synodical Government Measure 1969, s 1 (5) (a); Synodical Government (Amendment) Measure 1974, s 1; Revised Canons Ecclesiastical, Canons H1-H3 (as amended); and PARAS 416, 444 post); (2) with respect to deaconesses etc. (see the Deaconesses and Lay Ministry Measure 1972, s 1 (1); Revised Canons Ecclesiastical, Canon D1 (as amended); and PARA 759 post); (3) with respect to worship in the Church of England (see the Church of England (Worship and Doctrine) Measure 1974, s 1 (1); (3); Revised Canons Ecclesiastical, in particular Canons B1-B5A (as amended), and PARAS 935, 936, 938 post); (4) with respect to the obligations of clergymen and others to assent or subscribe to the doctrine of the Church of England (see the Church of England (Worship and Doctrine) Measure 1974, s 2 (1); Revised Canons Ecclesiastical, in particular Canon C15 (as amended); and PARA 660 post).

2 Synodical Government Measure 1969, s 1 (2). For an example, see the Revised Canons Ecclesiastical, Canon H2 (added by Canon promulgated 7th October 1969 and amended by Amending Canon No. 2).

3 Synodical Government Measure 1969, Sch. 2, art. 6 (a) (ii). As to the binding force of the canons, see PARA 308 ante.

4 Submission of the Clergy Act 1533, ss 1, 3; Synodical Government Measure 1969, s 1 (3). This does not, however, apply to any rule of ecclesiastical law relating to any matter for which provision may be made by canon in pursuance of the Church of England (Worship and Doctrine) Measure 1974: s 6 (1).

UPDATE

400 Legislation by canon

NOTE 1--Add: (5) for dispensing with or modifying any formal procedure or document required on ordination or admission to office, and, in particular, for dispensing with the declaration against simony, the stipendiary curate's declaration, the *si quis*, letters testimonial, deeds of institution, letters mandatory and mandates for induction: Church of England (Miscellaneous Provisions) Measure 1976 s 1(1); (6) for empowering the bishop of a diocese to grant a licence to an assistant curate to minister in his diocese for a specified term of years, and to revoke such licence before the expiration of the term: s 2(1).

NOTE 4--Submission of the Clergy Act 1533 s 3 does not apply to any rule of ecclesiastical law relating to any matter for which provision may be made by canon in pursuance of the Church of England (Miscellaneous Provisions) Measure 1976: s 1(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/A. IN GENERAL/401. Interpretation and proof of Measures.

401. Interpretation and proof of Measures.

Measures passed after 28th May 1925 are subject to the provisions of the Interpretation Act 1889 and the Interpretation Measure 1925¹. The Interpretation Act 1889 applies to all such Measures, and to the Interpretation Measure 1925 itself, as if they were Acts of Parliament². Where by an enactment other than the Interpretation Act 1889 a meaning is assigned (unless the contrary intention appears) to any word or expression in Acts of Parliament, that enactment applies to Measures³, subject to an exception respecting the use in Measures of the expressions 'England' and 'Church of England'⁴. References to the passing of a Measure, when used to determine a date, refer, unless the contrary intention appears, to the date of the royal assent⁵.

The law relating to the proving of Acts of Parliament and their contents applies, with the necessary modifications, to Measures⁶. It appears that the general rules as to the interpretation of statutes are subject to modification in the case of ecclesiastical statutes, at any rate so as to permit an examination of the circumstances giving rise to the passing of the Act or Measure⁷.

1 Interpretation Measure 1925, ss 1, 3; Synodical Government Measure 1969, s 2 (2).

2 Interpretation Measure 1925, s 1.

3 Ibid s 2.

4 Ibid s 2 proviso, which laid down that in Measures (unless the contrary intention appears) 'England' includes Berwick-upon-Tweed but does not include any part of England or Wales to which the Welsh Church Act 1914 (see PARA 322 ante) applies, and that 'Church of England' does not include the Church in Wales. For the meaning of 'Church of England', see PARA 302 ante.

5 Interpretation Measure 1925, s 5.

6 Ibid s 6. As to the proving of Acts of Parliament, see CIVIL PROCEDURE vol 11 (2009) PARA 889.

7 See eg *Hebbert v Purchas* (1872) LR 4 CP 301; *Ridsdale v Clifton* (1877) 2 PD 276, PC; and see Maxwell, Interpretation of Statutes 25.

UPDATE

401 Interpretation and proof of Measures

TEXT AND NOTE 1--Measures passed after 1 January 1979 are subject to the provisions of the Interpretation Act 1978: s 22(3). Measures passed after 28 May 1925 are also subject to it to the extent specified in 1978 Act Sch 2 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/A. IN GENERAL/402. Application of Measures to the Channel Islands.

402. Application of Measures to the Channel Islands.

A Measure passed by the Church Assembly or the General Synod may be applied, either wholly or in part and either with or without variations, to the Channel Islands¹ or either of them², subject (in the case of a Measure which has received the royal assent since 8th July 1931³) to the requirement that the Measure contains an express provision that it may be so applied⁴. The mode of application is by Order in Council confirming a scheme prepared by the Bishop of Winchester⁵ in consultation with the decanal conference of the island concerned or, if it relates to both islands, the decanal conferences of both; and approved by the General Synod after the views of the States of the island concerned, or of both islands, as the case may be, have been ascertained⁶. These provisions are not, however, to affect any other procedure for applying Measures to the islands or the direct application to the islands of Measures or parts of Measures dealing exclusively with the formularies of the Church of England or the spiritual rights or privileges of its members⁷.

1 For the meaning of 'the Islands' (ie the Channel Islands), see PARA 388 note 4 ante.

2 Channel Islands (Church Legislation) Measure 1931, ss 2, 3; Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, s 1.

3 Ie the date of the passing of the Channel Islands (Church Legislation) Measure 1931.

4 Ibid s 2.

5 See ibid s 1, Schedule para 1.

6 Ibid Schedule paras 2-5; Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, s 2; Synodical Government Measure 1969, s 2 (2). See eg the Synodical Government (Channel Islands) Order 1970, S.I. 1970 No. 1117, and PARA 388 ante.

7 Channel Islands (Church Legislation) Measure 1931, s 5.

UPDATE

402 Application of Measures to the Channel Islands

TEXT AND NOTES--The functions of the Home Secretary under the Schedule to the 1931 Measure have been transferred to the Lord Chancellor: Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/B. SPECIAL CATEGORIES OF LEGISLATION/403. Doctrinal formulae and church services.

B. SPECIAL CATEGORIES OF LEGISLATION

403. Doctrinal formulae and church services.

Before it is finally approved by the General Synod, a provision¹ touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of its sacraments or sacred rites must be referred to the House of Bishops, and must be submitted for such final approval in terms proposed by the House of Bishops and not otherwise². If the Convocations of Canterbury and York or either of them or the House of Laity so require³, a provision touching any of these matters must be referred, in the terms proposed by the House of Bishops for final approval, to the two convocations sitting separately for their provinces and to the House of Laity; and no provision so referred is to be submitted for final approval by the General Synod unless it has been approved, in the terms so proposed by each House of the two convocations and by the House of Laity⁴. Standing orders of the General Synod must provide for ensuring that a provision which fails to secure approval on a reference so made by each of the four Houses of the convocations or by the House of Laity is not proposed again in the same or a similar form until a new General Synod comes into being⁵. If any question arises whether the foregoing requirements apply to any provision, or whether they have been complied with, it is to be conclusively determined by the Presidents and Prolocutors of the House of the convocations and the Prolocutor and Pro-prolocutor of the House of Laity⁶.

Further, no canon making provision with respect to worship⁷ or doctrine⁸ may be submitted for Her Majesty's licence and assent unless it has been finally approved by the General Synod with a majority in each House of the synod of not less than two-thirds of those present and voting, and no regulation under any canon with respect to worship nor any approval, amendment, continuance or discontinuance of a form of service by the synod under any such canon is to have effect unless the regulation, the form of service or the amendment, continuance or discontinuance has been finally approved by the synod with the aforesaid majorities⁹.

1 'Provision' is evidently intended to include not only Measures, but also canons and Acts of Synod: cf. the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 12 (1). As to the Acts of Synod, see PARA 398 ante.

2 Ibid Sch. 2, art. 7 (1). As to the procedure for final approval, see PARA 415 post. As to powers of the General Synod to authorise deviations from the Book of Common Prayer, see PARAS 940, 945, 950, 973 post.

3 The question whether a reference is thus required is to be decided by the President and Prolocutor of the Houses of Convocation or by the Prolocutor and Pro-prolocutor of the House of Laity, as the case may be, after consultation with the appropriate Standing Committee or equivalent body; and their decision will be conclusive, in the absence of a prior resolution to the contrary by a House or Houses of convocation or by the House of Laity, as the case may be: ibid Sch. 2, art. 7 (3), (4).

4 Ibid Sch. 2, art. 7 (2). See also s 3 (7).

5 Ibid Sch. 2, art. 7 (5). Provision may be made, however, in the case of objection by one House of one convocation only, for a second reference to the convocations and, in the case of a second objection by one House only, for reference to the Houses of Bishops and Clergy of the General Synod for approval by a two-thirds majority of the members of each House present and voting, in lieu of approval by the four Houses: Sch. 2, art. 7 (5).

6 Ibid Sch. 2, art. 7 (6).

7 le under the Church of England (Worship and Doctrine) Measure 1974, s 1 (1): see PARA 935 post.

8 le under *ibid* s 2 (1): see PARA 660 post.

9 *Ibid* s 3. As to safeguards for doctrine in the making of canons and regulations under s 1 (1), see s 4, and PARA 936 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/B. SPECIAL CATEGORIES OF LEGISLATION/404. Permanent changes in baptism or communion services or the Ordinal.

404. Permanent changes in baptism or communion services or the Ordinal.

A Measure or canon providing for permanent changes in the services of baptism or Holy Communion or in the Ordinal must not be finally approved by the General Synod unless, at a stage determined by the archbishops, the Measure or canon, or the substance of the proposals embodied in it, has been approved by a majority of the dioceses at meetings of their diocesan synods¹. Any question whether this requirement applies to a Measure or canon, or whether it has been complied with, is to be conclusively determined by the archbishops, the Prolocutors of the Lower Houses of the Convocations and the Prolocutor and Pro-prolocutor of the House of Laity of the General Synod².

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 8 (1); Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 1 para 3. As to the procedure for final approval, see PARA 415 post.

2 Synodical Government Measure 1969, Sch. 2, art. 8 (2); Church of England (Worship and Doctrine) Measure 1974, Sch. 1 para 3

UPDATE

404 Permanent changes in baptism or communion services or the Ordinal

TEXT AND NOTE 1--A motion for final approval of a change is not deemed to have been carried except where it has received the assent of a two-thirds majority of those present and voting in each House of the General Synod: Synodical Government Measure 1969 Sch 2 art 8(1C); Church of England (Miscellaneous Provisions) Measure 1978 s 1.

In the case of the diocese in Europe (see PARAS 316, 455), approval must be by a majority of the dioceses at meetings of the bishop's council and standing committee of that diocese: 1969 Measure Sch 2 art 8(1); Diocese in Europe Measure 1980 s 3(1). If the votes of the houses of clergy and laity of the bishop's council and standing committee of the Diocese are in favour of any matter referred to that council and committee under art 8, that matter is deemed to have been approved for the purposes of art 8: 1980 Measure s 3(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/B. SPECIAL CATEGORIES OF LEGISLATION/405. Scheme affecting inter-church relations.

405. Scheme affecting inter-church relations.

A scheme for a constitutional union or a permanent and substantial change of relationship between the Church of England and another Christian body, being a body a substantial number of whose members reside in Great Britain, must not be finally approved by the General Synod unless, at a stage determined by the archbishops, the scheme or the substance of the proposals embodied in it has been approved by a majority of the dioceses at meetings of their diocesan synods¹. The General Synod may by resolution provide that final approval of any such scheme shall require the assent of special majorities of the members present and voting². Any question whether these requirements apply to a scheme, or whether they have been complied with, is to be conclusively determined by the archbishops, the Prolocutors of the Lower Houses of the Convocations and the Prolocutor and Proprolocutor of the House of Laity of the General Synod³.

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 8 (1); Synodical Government (Amendment) Measure 1974, s 2 (1). As to the procedure for final approval, see PARA 415 post. If the archbishops consider that the Synodical Government Measure 1969, Sch. 2, art. 8, should apply to a scheme which affects the Church of England and another Christian body, but does not fall within art. 8 (1), they may direct that art. 8 shall apply to that scheme; and where such a direction is given art. 8 will apply accordingly: art. 8 (1A); Synodical Government (Amendment) Measure 1974, s 2 (2).

2 Synodical Government Measure 1969, Sch. 2, art. 8 (1B); Synodical Government (Special Majorities) Measure 1971, s 1; Synodical Government (Amendment) Measure 1974, s 2 (3). The scheme itself and the special majorities required must be specified in the resolution; and the resolution may specify a special majority of each House or of the whole synod, and in the latter case the majorities may be different: Synodical Government Measure 1969, Sch. 2, art. 8 (1B); Synodical Government (Special Majorities) Measure 1971, s 1; Synodical Government (Amendment) Measure 1974, s 2 (3).

3 Synodical Government Measure 1969, Sch. 2, art. 8 (2).

UPDATE

405 Scheme affecting inter-church relations

TEXT AND NOTE 1--1969 Measure Sch 2 art 8(1) amended: Diocese in Europe Measure 1980 s 3; see PARA 404.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/406. Reference of Measure to Ecclesiastical Committee of Parliament.

C. SUBMISSION OF MEASURES TO PARLIAMENT

406. Reference of Measure to Ecclesiastical Committee of Parliament.

When the General Synod refers to its Legislative Committee¹ a Measure which it desires shall pass into law, the Legislative Committee must submit the Measure to the Ecclesiastical Committee of Parliament, together with such comments and explanations as the Legislative Committee may deem it expedient or be directed by the General Synod to add².

1 As to the Legislative Committee, see PARA 391 ante.

2 Church of England Assembly (Powers) Act 1919, s 3 (1); Synodical Government Measure 1969, s 2 (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/407. Composition of Ecclesiastical Committee.

407. Composition of Ecclesiastical Committee.

The Ecclesiastical Committee is a committee of members of both Houses of Parliament¹. It consists of fifteen members of the House of Lords, nominated by the Lord Chancellor, and fifteen members of the House of Commons, nominated by the Speaker². It is appointed at the commencement of each Parliament to serve for the duration of that Parliament²; and any casual vacancy is filled by the nomination of a member by the Lord Chancellor or the Speaker, as the case may be². The powers and duties of the Ecclesiastical Committee may be exercised and discharged by any twelve members³. The committee may sit and transact business whether Parliament is sitting or not, and notwithstanding any vacancy in the membership of the committee³. Subject to the provisions of the Church of England Assembly (Powers) Act 1919 the committee may regulate its own procedure³.

1 Church of England Assembly (Powers) Act 1919, s 2 (1).

2 Ibid s 2 (2).

3 Ibid s 2 (3).

UPDATE

407 Composition of Ecclesiastical Committee

TEXT AND NOTE 2--1919 Act s 2(2) amended: Constitutional Reform Act 2005 Sch 6 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/408. Functions of Ecclesiastical Committee.

408. Functions of Ecclesiastical Committee.

Upon the submission of a Measure by the Legislative Committee of the General Synod, the Ecclesiastical Committee must consider the Measure, and may, at any time during its consideration, either of its own motion or at the request of the Legislative Committee, invite that committee to a conference to discuss the provisions of the Measure, and thereupon a conference of the two committees must be held¹. After considering the Measure, the Ecclesiastical Committee must draft a report to Parliament stating the nature and legal effect of the Measure and the committee's views as to its expediency, especially with relation to the constitutional rights of all Her Majesty's subjects². The report must be communicated in draft to the Legislative Committee, but is not presented to Parliament until that committee signifies its desire that it should be presented³.

1 Church of England Assembly (Powers) Act 1919, s 3 (2).

2 Ibid s 3 (3).

3 Ibid s 3 (4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/409. Withdrawal of Measure.

409. Withdrawal of Measure.

At any time before the presentation to Parliament of the Ecclesiastical Committee's report the Legislative Committee may, either on its own motion or by direction of the General Synod, withdraw the Measure from further consideration by the Ecclesiastical Committee, but the Legislative Committee has no power to vary a Measure either before or after conference with the Ecclesiastical Committee¹.

¹ Church of England Assembly (Powers) Act 1919, s 3 (5); Synodical Government Measure 1969, s 2 (2). As to the possibility of a Measure being divided into two or more separate Measures, see, however para 411 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/410. Measures before Parliament.

410. Measures before Parliament.

When the Ecclesiastical Committee has reported to Parliament on any Measure, the report, together with the text of the Measure, is laid before both Houses of Parliament forthwith, if Parliament is then sitting or, if not, immediately after the next meeting of Parliament¹. Thereupon, on a resolution being passed by each House of Parliament directing that the Measure in the form laid before Parliament should be presented to the Queen², the Measure is presented to the Queen, and has the force and effect of an Act of Parliament on the royal assent being signified to it in the same manner as to Acts of Parliament³.

1 Church of England Assembly (Powers) Act 1919, s 4.

2 Parliament has no power to amend a Measure in any way; it can only either pass or decline to pass a resolution that the Measure be presented to the Queen.

3 Church of England Assembly (Powers) Act 1919, s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(ii) Legislation/C. SUBMISSION OF MEASURES TO PARLIAMENT/411. Division of Measures.

411. Division of Measures.

If, upon a Measure being laid before Parliament, the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons, acting in consultation, are of opinion that the Measure deals with two or more different subjects which might be more properly divided, they may by joint agreement divide the Measure into two or more separate Measures accordingly, and thereupon each of the Measures resulting from the division is treated as a separate Measure laid before Parliament¹.

¹ Church of England Assembly (Powers) Act 1919, s 4 proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(iii) Meetings and Proceedings of the General Synod/412. Meetings of the General Synod.

(iii) Meetings and Proceedings of the General Synod

412. Meetings of the General Synod.

The General Synod must meet in session at least twice a year, and at such times and places as it may provide or, in the absence of such provision, as the Joint Presidents¹ of the synod may direct².

1 The Joint Presidents of the synod are the Archbishops of Canterbury and York; see PARA 390 ante.

2 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 3 (1). The synod normally sits in February, July and November each year.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(5) THE GENERAL SYNOD OF THE CHURCH OF ENGLAND/(iii) Meetings and Proceedings of the General Synod/413. Chairmen of meetings.

413. Chairmen of meetings.

It is the duty of the Archbishops of Canterbury and York, as Joint Presidents of the General Synod, to determine the occasions on which it is desirable that one of them shall be the chairman of the meeting of the synod, and to arrange between them which of them is to take the chair on any such occasion¹. On other occasions the chair is to be taken by one of a panel of not less than three or more than eight chairmen, appointed from among the members of the synod by the presidents after consultation with the standing committee².

Subject to the constitution of the synod³ and to any standing orders, the business and procedure at any meeting of the synod, or any of its Houses, is to be regulated by the chairman of the meeting⁴.

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 4 (1). It is obligatory for one of the presidents to be the chairman when any motion is taken for the final approval of a provision to which Sch. 2, art. 7 (ie a provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the sacraments or sacred rites (see PARA 403 ante)) and in such other cases as may be provided in standing orders: Sch. 2, art. 4 (1) proviso. In the case of a canon or Act of Synod, this applies to the occasion of formal promulgation as well as to that of final approval: Sch. 2, art. 12 (1) proviso. As to Acts of Synod, see PARA 398 ante.

2 Ibid Sch. 2, art. 4 (2). The chairmen must be chosen for their experience and ability as chairmen of meetings and may be members of any House of the synod; they are to act in accordance with arrangements approved by the presidents and subject to any special directions of the presidents: Sch. 2, art. 4 (2). As to chairmanship at separate sittings of any of the three Houses or joint sittings of any two Houses, see PARA 417 post.

3 Ie subject to ibid Sch. 2.

4 Ibid Sch. 2, art. 11 (3).

UPDATE

413 Chairmen of meetings

TEXT AND NOTE 2--Function of standing committee now transferred to Appointments Committee (as to which see PARA 383A): Church of England (Transfer of Functions) Order 1998, SI 1998/1715.

The Presidents must, after consultation with the Appointments Committee of the Church of England, appoint from among the members of any House of the Synod a panel of such number of persons as the Presidents may determine, who must be available to take the chair at meetings of the Synod, being persons who must be chosen for their experience of chairing and ability to chair meetings; and it will be the duty of one of the persons on the panel, in accordance with arrangements approved by the Presidents and subject to any special directions of the Presidents, to take the chair at meetings of the Synod at which neither of the Presidents take the chair: 1969 Measure Sch 2 art 4(2) (substituted by Church of England (Miscellaneous Provisions) Measure 2006 s 8(a)).

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414. Standing orders.

The General Synod may make, amend and revoke standing orders providing for any of the matters for which such provision is required or authorised by its constitution¹ to be made, and, consistently with the constitution, for the synod's meetings, business and procedure². The standing orders may include a provision that a specified majority of the members of the whole synod present and voting shall be required for the suspension of standing orders³.

1 Ie required or authorised by the Synodical Government Measure 1969, Sch. 2.

2 Ibid s 2 (1), Sch. 2, art. 11 (1). As to particular matters for which the synod is authorised to provide by standing orders, see PARA 392 ante, 417 post. As to the power of each House to make standing orders, see PARA 417 post.

3 Ibid Sch. 2, art. 11 (1A); Synodical Government (Special Majorities) Measure 1971, s 1 (2).

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415. Voting in the General Synod.

A motion for the final approval¹ of any Measure or canon by the General Synod is not deemed to be carried unless, on a division by Houses², it receives the assent of the majority of the members of each House present and voting³, although, by permission of the chairman and with the leave of the synod given in accordance with standing orders, this requirement may be dispensed with⁴. All other motions are normally to be determined by a majority of the members of the synod present and voting, and the vote may be taken by a show of hands or a division⁵. However, except in the case of a motion relating solely to the course of business or procedure⁶, any twenty-five members present may demand a division by Houses, in which case the motion is not deemed to be carried unless, on such a division, it receives the assent of the majority of the members of each House present and voting⁷. In certain cases, by virtue of provisions of the synod's constitution⁸ or of a Measure, special majorities of the synod or of each of its Houses may be required⁹.

1 Except in the case mentioned in PARA 413 note 1 ante, references to final approval in relation to a canon or an Act of Synod are to be construed as referring to the final approval by the General Synod of the contents of the canon or Act, and not its formal promulgation: Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 12 (1). As to Acts of Synod, see PARA 398 ante.

2 Where a vote is to be taken on a division by Houses, it may be taken either by an actual division or in such other manner as standing orders may provide: *ibid* Sch. 2, art. 5 (4); Synodical Government (Amendment) Measure 1974, s 3.

3 Synodical Government Measure 1969, Sch. 2, art. 5 (1).

4 *Ibid* Sch. 2, art. 5 (1) proviso.

5 *Ibid* Sch. 2, art. 5 (2).

6 As to this, see note 9 *infra*.

7 Synodical Government Measure 1969, Sch. 2, art. 5 (2) proviso.

8 *Ie* the provisions of *ibid* Sch. 2.

9 *Ibid* Sch. 2, art. 5 (3); Synodical Government (Special Majorities) Measure 1971, s 1 (3). Where a Special Majority of each House is required the vote must be taken on a division by Houses (see note 2 *supra*); and where a special majority of the whole synod is required the motion is to be treated, for the purposes of the Synodical Government Act 1969, Sch. 2, art. 5, as one relating solely to procedure: Sch. 2, art. 5 (3). For instances of the requirement of special majorities, see PARAS 389, 403, 405, 414 ante, 935, 937 post.

UPDATE

415 Voting in the General Synod

NOTE 2--Without prejudice to the 1969 Measure Sch 2 art 11(1) (see PARA 414), where a vote is to be taken by a division either of the whole Synod or by Houses, standing orders may provide for the vote to be taken either by physical separation of the members voting or by other means including such electronic method of voting as may from time to time be determined by the Business Committee: 1969 Measure Sch 2 art

5(4) (substituted by Church of England (Miscellaneous Provisions) Measure 2006 s 8(b)).

TEXT AND NOTE 9--A measure providing for permanent changes in baptism or communion services or the Ordinal is not deemed to have been carried unless it has received the assent of a two-thirds majority of those present and voting in each House: Synodical Government Measure 1969 Sch 2 art 8(1C); Church of England (Miscellaneous Provisions) Measure 1978 s 1.

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(iv) The Houses comprised in the General Synod

A. IN GENERAL

416. Composition of the Houses.

The House of Bishops of the General Synod¹ is formed by the joining together of the Upper Houses of the Convocations of Canterbury and York², each of which comprises the archbishop and the diocesan bishops of the province and six persons (in the province of Canterbury) and three persons (in the province of York) elected by and from among the suffragan bishops of the province³.

The House of Clergy of the General Synod is formed by the joining together of the Lower Houses of the two convocations⁴; its membership includes proctors of the clergy elected for each diocese and for the universities, persons elected by and from among the deans and provosts of cathedrals, one archdeacon from each diocese, and representatives of the chaplaincies of the armed forces and of religious communities⁵.

The House of Laity is elected and otherwise constituted in accordance with the Church Representation Rules⁶.

1 As to the constitution of the General Synod, see PARA 390 ante.

2 Synodical Government Measure 1969, s 2 (1), Sch. 2, arts. 1, 2.

3 Revised Canons Ecclesiastical, Canon H3 paras 1, 2. This canon was added by Canon promulgated February 1975 under the Synodical Government (Amendment) Measure 1974, s 1 (1). The election is to be conducted in such manner as may be provided by rules made by the General Synod under Canon H3 in accordance with its standing orders: Canon H3 paras 1, 2, 5. Any suffragan bishop elected a member of the Upper House who ceases to be eligible for such membership is deemed to have vacated his seat: Canon H3 para 3. An election to fill a casual vacancy is to be conducted in the same manner as an ordinary election, but a casual vacancy occurring less than twelve months before an ordinary election is due is not to be filled unless the archbishop of the province in question so directs: Canon H3 para 4.

4 Synodical Government Measure 1969, Sch. 2, arts. 1, 2.

5 See PARA 444 post.

6 Synodical Government Measure 1969, Sch. 2, art. 2: see PARA 418 et seq post.

UPDATE

416 Composition of the Houses

TEXT AND NOTES--As to disqualification for membership of the General Synod, see the Church Representation Rules r 46A(c); and PARA 390.

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417. Sittings, business and procedure of the Houses.

Standing orders of the General Synod may provide for separate sittings of any of the three Houses of joint sittings of any two Houses, and as to who is to take the chair at any such separate or joint sitting¹. Each House may make, amend and revoke standing orders consistently with the constitution² and with any standing orders of the General Synod, for the separate sittings, business and procedure of that House³. Subject to the constitution and to any standing orders, the business and procedure at a meeting of any House or Houses of the synod is to be regulated by the chairman of the meeting⁴. Each House may appoint such committees of its members as it thinks fit⁵.

1 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 9 (1). As to standing orders of the General Synod, see PARA 414 ante.

2 Ie in accordance with *ibid* Sch. 2.

3 *Ibid* Sch. 2, art. 11 (2). See also the text and note 5 *infra*, and PARA 424 note 11 post.

4 *Ibid* Sch. 2, art. 11 (3). As to chairmen, see PARA 413 ante.

5 *Ibid* Sch. 2, art. 10 (3). Alternatively, the House may provide by its standing orders for the appointment of such committees: Sch. 2, arts. 10 (3), 11 (2).

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B. THE HOUSE OF LAITY

418. Composition of the House of Laity.

The House of Laity¹ of the General Synod consists mainly of the members elected by the diocesan electors of each diocese², that is to say, by the members of the House of Laity of all the deanery synods in the diocese, other than the co-opted members³. In addition, there are two members (one from each province) chosen by the lay members of religious communities from among their number⁴; and provision is made for certain ex officio members (whose number will not exceed seven⁵) and co-opted members (not exceeding five at any time⁶).

The House of Laity must elect for itself a chairman and vice-chairman, who also discharge the functions assigned to the Prolocutor and Pro-prolocutor of the House⁶.

1 As to the House of Laity generally, see the Church Representation Rules, Part V (rr. 29-35), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865); and cf. para 390 note 3 ante.

2 Church Representation Rules, r 29 (1) (a); and see PARA 419 et seq post. The maximum number of elected members is 250 (see r 30 (1). and PARA 419 post) out of the possible total membership of 264.

3 Ibid r 29 (2) (amended by S.I. 1973 No. 1865).

4 Ibid r 29 (1) (b). For the meaning of 'lay', see PARA 591 note 5 post. These representative members are to be chosen in such manner as may be prescribed by a resolution of the General Synod: r 29 (1) (b). As to the filling of casual vacancies among their number, see PARA 425 post.

5 Ibid r 29 (1) (c). As to ex officio and co-opted members, and their number, see PARA, 424 post.

6 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 9 (2).

UPDATE

418 Composition of the House of Laity

NOTES--Rule 29 now r 35; SI 1994/3118.

NOTE 1--For the purposes of Pt V, the diocese in Europe (see PARAS 316, 455) is deemed to be a diocese in the province of Canterbury: Church Representation Rules r 35(2); Diocese in Europe Measure 1980 s 2, Sch 2.

TEXT AND NOTE 3--Rule 35(3) (as renumbered) further amended: SI 1989/2025, SI 1994/3118. For 'other than the co-opted members' read 'persons co-opted to the deanery synod under r 24(7) (see PARA 528) or persons who are lay members of a religious community with separate representation in the General Synod under r 35(1) (b): r 35(3). Now includes members elected pursuant to r 10(1) (see PARA 566). This provision does not apply to the diocese in Europe: Church Representation Rules r 35(3); Diocese in Europe Measure 1980 s 2, Sch 2. The diocesan electors of the diocese in Europe are such number of persons elected by the annual meetings of the chaplaincies in that diocese as may be determined by the bishop's council and

standing committee of that diocese, and any lay person who is (i) an actual communicant (see PARA 420), (ii) of eighteen years or upwards, and (iii) a person whose name is entered on the electoral roll of such a chaplaincy, is qualified for election as a diocesan elector by the annual meeting of that chaplaincy: r 35(4); 1980 Measure s 2, Sch 2; SI 1994/3118.

The qualifying date for diocesan electors under r 35(3), (4) is 6 am on the date of the dissolution of the General Synod, except when a casual vacancy is being filled (see PARA 425), in which case the qualifying date is 6 am on the date when the nomination papers are issued: r 35(5); SI 1989/2094.

TEXT AND NOTE 4--The two members are to be chosen by and from the members of religious communities having their mother house in either province: r 35(1)(b) (amended by SI 1984/1039, SI 2004/1889).

The qualifying date for lay members of religious communities under r 35(1)(b) is the same as for diocesan electors; see r 35(5) (TEXT AND NOTE 3). The register of lay electors must be open to inspection at the diocesan office and any errors and omissions in the list may be corrected until the close of nominations after which no names may be added or removed until the declaration of the result of the election, those persons whose names are entered in the register being the qualified electors entitled to vote in that election: r 35(6); SI 1989/2094.

TEXT AND NOTE 5--Church Representation Rules r 35(1)(d) added: SI 2004/1889.

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419. Number of elected members.

The total number of members to be elected, which must not exceed 250, must be fixed by resolution of the General Synod¹. By the same resolution the number so fixed must be apportioned to the provinces of Canterbury and York in a proportion of sixty-eight to thirty-two (or as near to that as possible)²; and the number apportioned to each province must be divided among the dioceses of that province as nearly as possible in proportion to the total number of names on the church electoral rolls³ of the parishes in each diocese, but so that no diocese (other than the diocese of Sodor and Man) shall elect less than three members⁴.

1 Church Representation Rules, r 30 (1), contained in the Synodical Government Measure 1969, Sch. 3. The resolution must be passed not later than the last day of November in the fourth year after the last preceding election of the House of Laity (Church Representation Rules, r 30 (1)), but in the event of an early dissolution of the General Synod special directions may be given by the synod or its presidents as to the fixing and certifying of the number of members to be elected to the House of Laity by each diocese (see r 30 (4)). The secretary of each diocesan synod must certify to the secretary of the General Synod the total number of names on the rolls of the parishes in the diocese (r. 30 (2) (amended by S.I. 1973 No. 1865)); and the number of members to be elected by each diocese is to be certified to the secretaries of the diocesan synods as soon as it has been fixed by the General Synod (r. 30 (3)).

2 Ibid r 30 (1) (a).

3 As to the church electoral rolls, see *ibid* r 31 (amended by S.I. 1973 No. 1865), and PARA 591 post.

4 Ibid Sch. 3, r 30 (1) (b).

UPDATE

419 Number of elected members

TEXT AND NOTES--Rule 30 now r 36 (amended by SI 1994/3118, SI 2004/1889). Now the total number of members directly elected and specially elected from the dioceses in the province must not exceed 136 for Canterbury and 59 for York, and no diocese may have fewer than three directly elected members, except the diocese in Europe, which must elect two members, and the diocese of Sodor and Man, which must elect one member. The representatives of the religious communities referred to in r 35(1)(b), the elected or chosen persons referred to in r 35(1)(d), ex officio and co-opted members are additional to this total number. 'Specially elected' means the representatives of the religious communities referred to in r 35(1) (see PARA 418) and the representatives of the Channel Islands elected in accordance with the provisions of the Channel Islands (Representation) Measure 1931, and such persons are included in the total number: Church Representation Rules r 36(1); SI 1984/1039.

The total number of members to be elected by the diocesan electors of all the dioceses must be fixed by resolution of the General Synod not later than 30 November in the fourth year after the last preceding election of the House of Laity, subject to the following provisions, and the resolution must apportion the number so fixed to the provinces of Canterbury and York in a proportion of 68 to 32 or as nearly as possible thereto, and must divide the number among the dioceses so that the number of

members to be elected by the several dioceses are as nearly as possible proportionate to the total number of names certified for them under r 36(3): r 36(2); SI 1984/1039.

NOTE 1--Rule 30(2)-(4) now r 36(3)-(5) (amended by SI 2004/1889).

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420. Qualifications of elected members.

For the purpose of elections to the House of Laity, any lay person who is an actual communicant member of the Church of England¹ of eighteen years or upwards, whose name is entered on the church electoral roll² of any parish, or who is declared by the dean of any cathedral church to be a habitual worshipper at that cathedral church is qualified for election for any diocese by the diocesan electors of the diocese in which the parish or cathedral church is situated³. No person is disqualified from being elected by the fact that he is also a member ex officio of the House of Laity⁴.

1 For the purposes of the Church Representation Rules 'actual communicant member of the Church of England' means a member of the Church of England (as to which see PARA 345 ante) who is confirmed or ready and desirous of being confirmed and has received Communion according to the use of the Church of England or of a church in communion with the Church of England at least three times during the twelve months preceding the date of his election or appointment: Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865).

2 As to the church electoral roll, see PARA 591 post.

3 Church Representation Rules, r 31 (1) (amended by S.I. 1973 No. 1865). Where a person has his name on the rolls of two or more parishes, he must choose one of those parishes for this purpose: r 1 (3) (substituted by S.I. 1973 No. 1865). Where a diocese is divided into two or more areas in accordance with r 32 (2) (amended by S.I. 1973 No. 1865) (see PARA 421 post), any person who is qualified under r 31 for election for the diocese is qualified for election for any such area whether or not the parish on whose roll his name is entered, or the cathedral church at which he is a habitual worshipper, is situated in that area, but no person may be nominated for more than one such area at the same time: r 31 (2) (added by S.I. 1973 No. 1865).

4 Ibid r 38 (amended by S.I. 1973 No. 1865).

UPDATE

420 Qualifications of elected members

NOTES--Rule 31 now Church Representation Rules r 37; SI 1994/3118.

TEXT AND NOTE 1--For 'actual communicant member of the Church of England' read 'actual communicant', which means a person who has received communion according to the use of the Church of England or of a church in communion with the Church of England at least three times during the 12 months preceding the date of his election or appointment, being a person whose name is on the roll of a parish and is either (a) confirmed or ready and desirous of being confirmed, or (b) receiving the holy communion in accordance with the provisions of Canon B15A para 1(b): Church Representation Rules r 54(1); SI 1994/3118.

TEXT AND NOTE 3--Now, subject to the Church Representation Rules rr 1(4), 46A, a lay person is qualified for election for any diocese by the diocesan electors of the diocese if he is an actual communicant, he is of 18 years of age on the date of the dissolution of the General Synod or, when a casual vacancy is being filled on the date on which the nomination papers are issued in accordance with r 39(3) (see PARA 422), and his name is at 6 am on the date of the dissolution of the General Synod or, when a casual

vacancy is being filled, on the date on which the nomination papers are issued in accordance with r 39(3) entered on the roll of any parish in the diocese, or who at any time within the period of two months beginning one month immediately before that date is declared by the dean of any cathedral church to be a habitual worshipper at that cathedral church: Church Representation Rules r 37(1) (amended by SI 1980/178, SI 1984/1039, SI 1994/3118, SI 1999/2112, SI 2004/1889).

NOTE 3--Rule 31(2), renumbered r 37(2), omitted: SI 1999/2112. Where any elected member of the House of Laity of the General Synod takes any paid office or employment as provided by r 46A(c), his seat must forthwith be vacated: Church Representation Rules r 46(1)(e); SI 1984/1039.

Rule 31(2) now Church Representation Rules r 37(3); SI 1994/3118.

Rule 1(3) renumbered as r 1(4): SI 1994/3118; SI 1995/3243.

NOTE 4--Rule 38 now Church Representation Rules r 47; SI 1994/3118.

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421. Electoral areas.

Every diocese¹ is an electoral area for the purposes of elections to the House of Laity². This is subject, however, to a provision whereby a diocesan synod is enabled, for the purposes of any election, to divide a diocese into two or more areas and apportion the number of members to be elected for the diocese among such areas³, the division being made in such manner that not less than three members will be elected in any such area⁴. In the event of such a division the election will be conducted in each area as if it were a separate diocese, and any such division is to remain in force until it is revoked by the diocesan synod⁵.

Each island of the Channel Islands⁶ is a separate electoral area for the purpose of representation to the House of Laity, Provided that a deanery synod is in being and certain other requirements⁷ are fulfilled⁸.

1 For the purpose of representation in the House of the General Synod no account is to be taken of any alteration of diocesan boundaries made by a pastoral scheme under the Pastoral Measure 1968, s 35 or s 36, until the elections for those House next occur after the coming into operation of the relevant provisions of the scheme: s 37.

2 Church Representation Rules, r 32 (1), contained in the Synodical Government Measure 1969, Sch. 3.

3 Church Representation Rules, r 32 (1), (2) (amended by S.I. 1973 No. 1865).

4 Ibid r 32 (3) (added by S.I. 1973 No. 1865).

5 Ibid r 32 (2). This power of division may be exercised by a diocesan synod only so far as it is consistent with any rule respecting the conduct of elections made under the standing orders of the General Synod (see r 33 (4) (amended by S.I. 1973 No. 1865), and PARA 422 note 4 post); and subject to the rule that the number of members elected in any area will not be less than three (see the text and note 4 supra) (r. 32 (2) (amended by S.I. 1973 No. 1865)). Where a diocese is so divided, a diocesan elector who is a representative of the laity must vote in the area to which the body by which he was elected belongs, and a diocesan elector who is not a representative of the laity must vote in such area as the diocesan synod may decide: r 32 (2). As to diocesan electors who are, or are not, representatives of the laity, see PARA 418 ante, 528-529 post.

6 Cf. para 388 note 4 ante.

7 Ie the requirements of the Channel Islands (Representation) Measure 1931, ss 3-5: see PARA 402 ante.

8 Ibid s 2.

UPDATE

421 Electoral areas

NOTES--Rule 31 now r 38; SI 1994/3118.

NOTE 1--Repealed: Pastoral (Amendment) Measure 1982 s 27.

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422. Conduct of elections.

Subject to any directions by the General Synod or its presidents, elections to the House of Laity must be carried out during the three months immediately following any dissolution of the synod, and in each diocese during the period within those three months which is fixed by the Archbishops of Canterbury and York¹. The presiding officer in each diocese or area will normally be the registrar of the diocese or a person appointed by him with the approval of the registrar of the province². Every candidate must be nominated and seconded by diocesan electors qualified to vote in the area in which he is seeking election³. Contested elections are to be conducted by voting papers upon the principle of proportional representation under rules made from time to time as provided by the standing orders of the General Synod⁴.

1 Church Representation Rules, r 33 (1), contained in the Synodical Government Measure 1969, Sch. 3. As to the power of the bishop of the diocese to extend or alter the time or to modify the procedure for an election, see PARA 389 ante.

2 Church Representation Rules, r 33 (2) (amended by S.I. 1973 No. 1865). If, however, the registrar of the diocese is a candidate in the election, the presiding officer will be a person appointed by the registrar of the province: r 33 (2). The duties of the presiding officers are defined by rules to be prepared by the provincial registrars acting jointly, subject to approval by the standing Committee of the General Synod: r 33A (1) (added by S.I. 1973 No. 1865). For performing the duties so prescribed a presiding officer is entitled to a fee of £50 with a further £10 for every hour spent on counting votes, payable by the diocesan board of finance: r 33A (2) (added by S.I. 1973 No. 1865); Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, item 1, provision 1, made under the Ecclesiastical Fees Measure 1962, s 1. Where, with the prior written agreement of the bishop's council and standing committee, the presiding officer or any other person performs any other duties in connection with elections to the House of Laity, he is entitled to such fees as may be specified in the agreement: Church Representation Rules, r 33A (2) (added by S.I. 1973 No. 1865). The expenses of the elections must be paid out of diocesan funds: r 33 (2).

3 Ibid r 33 (3). All nominations must be in writing and must be sent to the presiding officer of the area, together with evidence of the candidate's consent to serve, within the period of not less than twenty-eight days specified by the presiding officer, who must dispatch to every elector election addresses from any candidates who so request and who provide sufficient copies at their own expense: r 33 (3) (amended by S.I. 1973 No. 1865).

4 Ibid r 33 (4) (amended by S.I. 1973 No. 1865). Voting papers marked and signed by the electors are returnable to the presiding officer within the period of not less than twenty-one days after the issue of the papers specified by him: r 33 (4) (amended by S.I. 1973 No. 1865). Provision is made with respect to a candidate's right to be present, or to be represented, at the counting of the votes (see r 33 (5)). (amended by S.I. 1973 No. 1865)). and the communication and publication of the results of the election (see r 33 (6)). Valid voting papers must be preserved for at least two years: r 33 (7) (added by S.I. 1973 No. 1865). In any case in which there has been no valid election, the diocesan bishop has power to give directions for a fresh election: r 43 (1) (d). As to appeals arising out of elections, see PARA 426 post.

UPDATE

422 Conduct of elections

TEXT AND NOTES--Rule 33 now Church Representation Rules r 39; SI 1994/3118. Where it is a requirement that a given number or not less than a given number of places of those elected are to be filled by candidates of a named category, the presiding officer must follow the procedure set out in the Church Representation Rules r 51; SI 1989/2094.

NOTE 2--As to current fees orders, see PARA 1204. 1962 Measure replaced: Ecclesiastical Fees Measure 1986. Rule 33A now r 40; SI 1994/3118. Provision now for approval by the lay members of the Business Committee (see PARA 383B): r 40(1); National Institutions Measure 1998 Sch 5 para 2(a); SI 1999/2112. For 'Ecclesiastical Fees Measure 1962 s 1' read 'Ecclesiastical Fees Measure 1986': Church Representation Rules r 40(2); SI 1994/3118. On receipt of the names and addresses of the qualified electors from the diocesan electoral registration officer, the presiding officer must ensure that in respect of the election (i) those persons are sent or given nomination papers, and (ii) only such persons are sent or given voting papers at the address entered against their names in the register of electors: Church Representation Rules r 39(3); SI 1994/3118. The presiding officer must also send nomination papers to any other person who requests them: Church Representation Rules r 39(3).

TEXT AND NOTES 3, 4--Rule 33(3)-(6) now Church Representation Rules r 39(4)-(12) as substituted by SI 1994/3118. Every candidate must be nominated and seconded by diocesan electors qualified to vote in the area in which the candidate is seeking to be elected: Church Representation Rules r 39(4). All nominations must be in writing, must include the year of the candidate's birth and a statement as to whether the candidate is seeking re-election and, if so, as to the dates of the candidate's previous service and must be delivered either by post, by facsimile transmission or in person to the presiding officer of the area, together with evidence of the candidate's consent to serve, within such period, being a period of not less than 28 days ending on such date as may be specified by the presiding officer, provided that where a nomination paper has been sent by facsimile transmission, the name of the candidate must not appear on the voting paper unless the original nomination paper has been received by the presiding officer within three days of the closing date for nominations: r 39(4) (amended by SI 2004/1889).

It is the duty of the presiding officer to scrutinise nomination papers as soon as they have been lodged and he must, without delay, inform the candidate concerned whether the nomination is valid; where the nomination is invalid, the presiding officer must give his reasons for so ruling and if, by the close of the nomination period, no valid nomination is received, the candidate must be excluded from the election: Church Representation Rules r 39(5)(a). It is also the duty of the presiding officer to supply free of charge to a duly nominated candidate in the election one copy of the names and addresses of the qualified electors (including, if an elector has authorised the use of an electronic mail address, that address) within seven days of receiving his written request: r 39(5)(b) (amended by SI 2004/1889).

If any of the candidates so request, the presiding officer must despatch to every elector election addresses from those candidates, being not more than one sheet of A4 paper: Church Representation Rules r 39(6). Sufficient copies of the addresses must be provided by the candidates at their own expense and be delivered to the presiding officer by such date as he determines, being not less than seven days after the close of nominations: r 39(6). The presiding officer is under no obligation to despatch to electors election addresses which are received after the due date or which are not in the prescribed form: r 39(6).

It is the duty of the presiding officer in any election to seek to ensure that during the period beginning with the date on which nominations are invited and ending on the last date for the return of the voting papers, no papers or other literature except election addresses prepared by the candidates under the above provisions are circulated to the electors by him or by or under authority of the diocesan synod or the deanery synod or distributed at a synod meeting which in his opinion are likely to prejudice the election: r 39(7). The rural dean and the lay chairman and secretary of the deanery synod are also under a duty to seek to ensure that during the election period no papers or other

literature form part of an official circulation or are distributed at a synod meeting which in the opinion of any of them are likely to prejudice the election: r 39(7). Subject to r 51 (constraints in elections), if more candidates are nominated for any area than there are seats to be filled, the election must be conducted by voting papers by the method of the single transferable vote under rules to be made from time to time as provided by the Standing Orders of the General Synod: r 39(8). Every voting paper, which must include the year of birth of each candidate and a statement as to whether the candidate is seeking re-election and, if so, as to the dates of the candidate's previous service must be marked and signed on the reverse by the elector and must be returnable to the presiding officer within such period, not less than 21 days after the date on which the voting paper is issued, as the officer may specify, provided that a voting paper sent by facsimile transmission must not be counted as a valid vote: r 39(8) (amended by SI 2004/1889).

A candidate or a person nominated by him has the right to be present at the counting of the votes in order to scrutinise the count, but must take no part in it: Church Representation Rules r 39(9). The presiding officer must give not less than seven days notice in writing to each candidate of the time and place at which the votes are to be counted: r 39(9). Where within seven days of a count being completed the presiding officer is of the opinion that a recount should take place because of a possible irregularity or inaccuracy in the count, he may, with the concurrence of the registrar of the province, order such a recount and must give notice in writing to each candidate of the time and place at which the votes are to be recounted: r 39(10). A full return of the result of any election and of the result sheet must be sent by the presiding officer within four working days of the declaration of the result to every candidate in the election, the Clerk to the General Synod and an election scrutineer appointed by the Business Committee of the General Synod: r 39(11); SI 1999/2112. The scrutineer has power within 10 days of the declaration of the result to order a recount of the voting papers if in his opinion this might be material to the result of the election: Church Representation Rules r 39(11). The result sheet must be publicly displayed in the diocesan office in such manner as the bishop may approve and at the General Synod office until the end of the first group of sessions of the new Synod as the Clerk to the General Synod may direct: r 39(12); SI 1999/2112.

Rules 33(7), 43 now Church Representation Rules rr 39(13), 53; SI 1994/3118.

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423. Term of office.

The term of office of elected members of the House of Laity and of members chosen by the lay members of religious communities is for the lifetime of the General Synod for which they are elected or chosen; but this is without prejudice to their continuing to act during the period of dissolution of the synod¹ as members of boards, commissions, committees and other bodies of the synod or as ex officio members of other bodies constituted under the Church Representation Rules². If any elected member ceases to have the qualification of entry on the roll of any parish in the diocese for which he was elected³ or of being declared a habitual worshipper at the cathedral church of the diocese, his seat is forthwith vacated, unless the bishop's council and Standing Committee has determined that a person who ceases to have such qualification should remain a member of the House of Laity⁴. Any member of the House of Laity may resign his membership by notice in writing to the secretary of the General Synod⁵.

1 See the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 3 (4), and PARA 395 ante.

2 Church Representation Rules, r 34, contained in the Synodical Government Measure 1969, Sch. 3. As to the term of office of co-opted members, see PARA 424 post.

3 See, however para 421 note 1 ante.

4 Church Representation Rules, r 37 (1) (d), (4) (amended and added by S.I. 1973 No. 1865). No person will be deemed to vacate his seat as an elected or chosen member by reason only of the fact that subsequently to his election or choice he has become a member ex officio: r 38 (amended by S.I. 1973 No. 1865).

5 Ibid r 40 (substituted by S.I. 1973 No. 1865). The resignation takes effect on the date specified in the notice or, if no date is specified, on the receipt of the notice by the secretary: r 40 (substituted by S.I. 1973 No. 1865).

UPDATE

423 Term of office

NOTES--Rule 34 now r 41; SI 1994/3118.

TEXT AND NOTES 1--This provision also applies to the members elected or chosen under the Church Representation Rules r 35(1)(d) but is without prejudice to their continuing to be ex officio members of other bodies constituted under the rules: r 41 (amended by SI 2004/1889).

TEXT AND NOTE 4--Rules 37, 38 now rr 46, 47; SI 1994/3118. If the lay members of the bishop's council and standing committee have determined before the vacancy occurs that such a person is able and willing to continue to discharge to their satisfaction the duties of a member of the House of Laity elected for that diocese, neither his seat as a member of that House nor his seat as a lay member of the diocesan synod is vacated: r 46(5); SI 1980/178; SI 1984/1039; SI 1989/2094.

Rule 46 applies in relation to a member of the House of Laity of the General Synod elected for the diocese in Europe (see PARAS 316, 455) except that in such a case r 46(1)(d) refers to an elected member ceasing to have the qualification of entry on the

electoral roll of any chaplaincy in that diocese: r 46(6); Diocese in Europe Measure 1980 s 2, Sch 2; SI 1984/1039.

NOTE 4--Church Representation Rules r 46(1)(d), (2) amended, r 46(5A) added: SI 2004/1889.

NOTE 5--Rule 40 now r 49; SI 1994/3118.

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424. Ex officio and co-opted members.

The following persons, if they are not in holy orders, are ex officio members of the House of Laity: the Dean of the Arches and Auditor¹, the Vicars-General of the provinces of Canterbury and York², the three Church Estates Commissioners³ and the Chairman of the Central Board of Finance⁴.

The House of Laity has power to co-opt persons who are actual lay communicant members of the Church of England⁵ of eighteen years or upwards to be members of the House of Laity⁶, but no such person is qualified to become a co-opted member unless at least two-thirds of the members of the Standing Committee of the House have first consented, either at a meeting or in writing, to his being co-opted⁷. The co-opted members must not at any time exceed five in number⁸. Except in regard to their appointment, the ex officio and co-opted members have the same rights and are subject to the same rules and regulations as elected members⁹. Co-opted members will normally continue to be members of the House of Laity until the next dissolution of the General Synod¹⁰, but the House of Laity may, in the case of any co-opted member, fix a shorter period of membership¹¹.

1 Church Representation Rules, r 35 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to the Dean of the Arches, see PARA 1286 post.

2 Church Representation Rules, r 35 (1) (b), (c) (amended by S.I. 1973 No. 1865). As to the vicargeneral, see PARA 430 post.

3 Ibid r 35 (1) (d) (amended by S.I. 1973 No. 1865). As to the commissioners, see PARA 379 ante.

4 Ibid r 35 (1) (e) (amended by S.I. 1973 No. 1865). As to the board, see PARA 394 ante.

5 For the meaning of 'actual communicant member of the Church of England', see PARA 420 note 1 ante.

6 Church Representation Rules, r 35 (2) (amended by S.I. 1973 No. 1865).

7 Ibid r 35 (2) proviso (b).

8 Ibid r 35 (2) proviso (a).

9 Ibid r 35 (3). But an ex-officio or co-opted member will not, by reason only of his membership of the House of Laity, be a member of any other body constituted under the Church Representation Rules: r 35 (3) proviso.

10 Ibid r 35 (4). But this is without prejudice to their continuing to act during the period of the dissolution as members of boards, commissions, committees or other bodies of the General Synod (see the Synodical Government Measure 1969, Sch. 2, art. 3 (4), and PARA 395 ante): Church Representation Rules, r 35 (4).

11 Ibid r 35 (4) proviso. The House of Laity may make standing orders for regulating the procedure of and incidental to the appointment of co-opted members and otherwise for carrying r 35 into effect: r 35 (5).

UPDATE

424 Ex officio and co-opted members

NOTES--Rule 35 now r 42; SI 1994/3118.

TEXT AND NOTES 1-4--The Chairman of the Church of England Pensions Board is also an ex officio member: r 42(1)(f) (as renumbered): SI 1994/3118. The members of the Archbishops' Council who are actual communicants are also ex officio members: r 42(1)(g); National Institutions Measure 1998 Sch 5 para 2(b).

NOTE 5--For 'actual lay communicant members of the Church of England' read 'actual lay communicants': r 42(2); SI 1994/3118 (see PARA 420).

TEXT AND NOTE 9--Where such members are on more than one electoral roll, they must choose the parochial church council of which they are to be a member: r 42(3); SI 1984/1039.

NOTE 10--The provision is also without prejudice to co-opted members continuing to be ex officio members of other bodies constituted under the Rules during the period: r 42(4); SI 1994/3118.

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425. Casual vacancies.

Elections to fill casual vacancies among the elected members¹ of the House of Laity must be held as soon as reasonably practicable and must be completed within six months from the occurrence of the vacancy², except where the period for holding a general election to the House of Laity is due to begin within twelve months of the vacancy, in which case the vacancy is to remain unfilled unless the bishop's council and standing committee, acting in accordance with any directions of the diocesan synod, otherwise direct³. Elections to fill casual vacancies must be conducted in the same manner as ordinary elections⁴, except when the vacancy occurs within two years after a preceding election conducted by voting papers upon the principle of proportional representation, in which case, provided the bishop's council and standing committee acting in accordance with any directions of the diocesan synod agree, the election must be conducted⁵ by means of the voting papers received at the preceding election⁶. Any person elected to fill a casual vacancy holds office only for the unexpired portion of the term of office of the person in whose place he is elected⁷.

1 The provisions relating to election which are mentioned in this paragraph apply also, so far as applicable and with the necessary modifications, to the choosing of persons under the Church Representation Rules: r 39 (8), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865); cf. para 418 note 4 ante.

2 Church Representation Rules, r 39 (5) (amended by S.I. 1973 No. 1865). No election to the House of Laity is invalid by reason of a casual vacancy among the diocesan electors not having been filled, but where possible all casual vacancies among the diocesan electors should be filled at the time of election to the House of Laity: r 39 (4) (added by S.I. 1973 No. 1865).

3 Ibid r 39 (5) proviso (substituted by S.I. 1973 No. 1865).

4 Ibid r 39 (3) (added by S.I. 1973 No. 1865).

5 I.e. in accordance with ibid r 39 (1) (substituted by S.I. 1973 No. 1865).

6 Ibid r 39 (6) (added by S.I. 1973 No. 1865). The presiding officer asks each unelected but qualified candidate in the preceding election if he consents to serve: if only one candidate so consents he is to be elected to fill the vacancy, but if two or more consent the votes validly cast in the preceding election are to be recounted from the beginning in accordance with the rules made under standing orders of the General Synod mentioned in r 33 (4) (amended by S.I. 1973 No. 1865): r 39 (7) (added by S.I. 1973 No. 1865).

7 Ibid r 39 (9) (amended by S.I. 1973 No. 1865).

UPDATE

425 Casual vacancies

TEXT AND NOTES--Rule 39 now r 48; SI 1994/3118. 'Casual vacancy' in the Church Representation Rules r 48 includes the case where insufficient candidates have been nominated to fill the places available: r 48(11); SI 1989/2094.

TEXT AND NOTES 1-3--An election to fill a casual vacancy in the House of Laity must be completed, so far as possible, within six months from the occurrence of the vacancy and, in event of it not being filled within that period, the Chairman of the House of Laity of the General Synod may give directions to the presiding officer as to the date

by which the vacancy must be filled: r 48(5)(a); SI 1989/2094. Where a casual vacancy occurs in the House of Laity of the General Synod and the period for holding a general election thereto is due to begin within 12 months of the vacancy, it must not be filled unless the lay members of the bishop's council and standing committee, acting in accordance with any directions of the diocesan synod, otherwise direct: r 48(5)(b); SI 1989/2094. As to the calculation of the period of six months, see r 48(10) (see PARA 513).

TEXT AND NOTE 4--Casual vacancies must be filled: r 48(3); SI 1989/2094. The qualifying date for diocesan electors must be determined in accordance with r 35(5): r 48(3); SI 1994/3118.

TEXT AND NOTES 5, 6--Replaced. Where a casual vacancy in the House of Laity of the General Synod occurs within the period of two years (i) beginning with 1 August in the year of the last general election thereto, or (ii) beginning with the date of the declaration of the result of an election to fill a casual vacancy where the election was conducted by voting papers in the same manner as a general election, the election to fill the casual vacancy must be conducted by those papers in accordance with r 48(6) (see NOTE 6): r 48(5)(c); SI 1989/2094, SI 1994/3118.

NOTE 5--Rule 48(1) (as renumbered) now substituted by SI 1989/2094.

NOTE 6--Rule 39(7) now r 48(6) (as substituted by SI 1999/2112). Where the election is to be conducted by the voting papers of a general election, the number of persons to be elected must be the same as in the general election, provided that no continuing candidate elected during the original count may be excluded: Church Representation Rules r 48(6)(a). Where the election is to be conducted by the voting papers of an election other than the general election, the number of persons to be elected shall be calculated by adding together the number of persons previously elected using these voting papers who are still continuing as elected persons, and the number of casual vacancies to be filled, provided that no continuing candidate elected during the original count must be excluded: r 48(6)(b). The presiding officer for the area in question must ask every candidate not elected in the previous election who is still qualified for election for the diocese in question if he consents to serve: r 48(6)(c). If the number of candidates is the same as the places to be filled and he or they so consent or only one of those candidates so consents he must be elected to fill the casual vacancy: r 48(6)(d). If more candidates than places to be filled so consent the votes validly cast in the preceding election must be recounted from the beginning in accordance with the rules mentioned in r 39(8), the presiding officer having first withdrawn those candidates who do not consent or are no longer eligible for election: r 48(6)(e).

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426. Appeals.

Provision is made for appeals arising out of an election or choice of members of the House of Laity¹. A person aggrieved may appeal against the allowance or disallowance of any vote given or tendered in an election² or the result of any election or choice³. Notice of the appeal must be given in writing to the bishop of the diocese⁴ within the time prescribed⁵. Unless the parties agree to a settlement of their dispute the bishop must refer the appeal to the standing committee of the General Synod, which must appoint three or a greater odd number of its members to consider and decide the appeal⁶. The members so appointed must consider all the relevant circumstances, they are entitled to inspect all relevant documents and to be furnished with all relevant information, and they must give the parties an opportunity of appearing before them in person or through a legal or other representative⁷.

1 See the Church Representation Rules, r 36, contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Church Representation Rules, r 36 (1) (c).

3 Ibid r 36 (1) (d).

4 Ibid r 36 (2).

5 The time allowed is normally fourteen days after the allowance or disallowance of the vote (r. 36 (2) (b)) or the announcement by the presiding officer of the result of the election (r. 36 (2) (c)), or as the case may be, but the appellate body may at any time extend the time: r 36 (7).

6 Ibid r 36 (4) (amended by S.I. 1973 No. 1865).

7 Ibid r 36 (6).

UPDATE

426 Appeals

TEXT AND NOTES--Rule 36 now r 43; SI 1994/3118. Provisions as to election appeals now contained in rr 44, 45; SI 1989/2094.

The provisions of r 44 (except r 44(5) (see PARA 596)) in so far as they confer a right of appeal by any person referred to in r 44(2) (TEXT AND NOTE 2) against the result of an election and provide for notice of an appeal and the determination thereof, apply in relation to an election to the House of Laity of the General Synod by the diocesan electors of the diocese in Europe: r 44(3); SI 1989/2094.

TEXT AND NOTE 2--Now r 44(1)(a); SI 1989/2094. Persons with a right of appeal are an elector or candidate in the election, or the chairman of the House of Laity or of the House of Clergy of the diocesan synod or, in an election to the House of Laity of the General Synod, the chairman and vice-chairman of that House of Laity as specified in r 44(5): r 44(2); SI 1989/2094, SI 1994/3118. The chairman and vice-chairman of the House of Laity of the General Synod each have a right of appeal in accordance with r 44(1) in respect of any election to the House of Laity of the General Synod in either of the provinces of Canterbury and York and he must give notice in writing of such appeal

to the presiding officer concerned not later than three months after the result of the election has been declared by the presiding officer, provided that if the office of chairman or vice-chairman is vacant when the result of the election is published, the person who last held the office is deemed to hold that office for these purposes: r 44(5); SI 1994/3118. Where the chairman or vice-chairman of the House of Laity has given notice of appeal, he must not be appointed to hear the appeal: r 44(9); SI 1989/2094.

TEXT AND NOTE 3--Now r 44(1)(b), SI 1989/2094.

TEXT AND NOTE 4--Subject to r 44(6) (see PARA 596), in the case of an appeal arising out of an election to the House of Laity of the General Synod or the diocesan synod notice of appeal must be given in writing to the chairman of the House of Laity of the diocesan synod; in any other case concerning the laity, notice of appeal must be given in writing to the lay chairman of the deanery synod: r 44(4); SI 1989/2094, SI 1994/3118.

NOTE 5--Now rr 44(4)(a), (b), 45(c); SI 1989/2094. For 'the announcement ... election' read 'the day on which the result is declared by the presiding officer': Church Representation Rules r 44(4)(b); SI 1999/2112.

TEXT AND NOTE 6--An appeal arising out of an election or choice of members of the House of Laity of the General Synod must, within 14 days of the appeal being lodged, be referred to the Chairman and Vice-Chairman of that House unless, within that period, the appellant withdraws the appeal in writing: Church Representation Rules r 44(8) (r 44(8), (9) substituted by SI 1999/2112). Subject to the Church Representation Rules r 44(9), the Chairman and Vice-Chairman acting jointly must appoint three persons (one of whom must be a qualified lawyer) from an appeal panel consisting of the Dean of the Arches and Auditor, the Vicar General of the Province of Canterbury, the Vicar General of the Province of York and twelve members of the House of Laity of the General Synod nominated by the Appointments Committee of the Church of England to consider and decide the appeal: r 44(8). Where (a) the Chairman or Vice-Chairman of the House of Laity has given notice of appeal under the Church Representation Rules r 44(5), or where he comes from the diocese to which the appeal relates he must take no part in the appointing of the three persons to hear the appeal and he must not be appointed to hear the appeal: r 44(9)(a). Where a member of the appeal panel comes from the diocese to which the appeal relates, or might otherwise have a benefit from the outcome of the election, he must not be appointed to hear the appeal: r 44(9)(b). Where an appeal is pending in respect of an election to any synod, any person who was declared elected in accordance with r 33 (see PARA 503) but whose election is or may be affected by the appeal is deemed to be a member of that synod until the appeal is heard or disposed of: Church Representation Rules r 44(12); SI 1994/3118.

TEXT AND NOTE 7--Unless the persons appointed to consider and decide the appeal consent to the withdrawal of the appeal, they must determine the matter at issue and, in an election appeal must determine whether (i) the person or persons whose election is complained of was or were duly elected, (ii) the facts complained of amount to a minor infringement of the rules which did not affect the outcome of the election in which event the appeal must be dismissed, (iii) the facts complained of amount to a procedural irregularity in the conduct of the election, but that in all the relevant circumstances the appeal must be dismissed, or (iv) the election was void. The determination so certified is final as to the matters at issue. Where there has been no valid election, a fresh election must be directed to be held: r 45(d); SI 1989/2094, SI 1999/2112. As to the power to award costs, see Church Representation Rules r 45(f); SI 1989/2094.

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427. Representation on foundation of new bishoprics.

Upon the foundation of a new bishopric the General Synod may provide by resolution or otherwise¹ for the representation, during the period between the foundation of the new bishopric and the next election to the House of Laity, of any diocese constituted upon the foundation of the new bishopric and of any diocese the area of which is altered by the foundation of the new bishopric, and for matters consequential upon them². The General Synod may, in exercising its powers, allocate any members of the House of Laity originally elected by the representative electors of the area affected³ or any part of it to the new dioceses concerned or any of them, so that any member allocated to the new diocese shall be in the same position as if he had been elected by the representative electors of that diocese⁴.

1 New Dioceses (Transitional Provisions) Measure 1927, s 2 (1); Synodical Government Measure 1969, s 2 (2). Prima facie evidence of any resolution or other exercise of any power conferred by the New Dioceses (Transitional Provisions) Measure 1927 may be given by producing a copy of it signed by the secretary or assistant secretary of the General Synod: s 2 (2); Synodical Government Measure 1969, s 2 (2).

2 New Dioceses (Transitional Provisions) Measure 1927, ss 1 (1) (powers), 3 (definitions); Synodical Government Measure 1969, s 2 (2).

3 I.e. the areas of the new dioceses concerned collectively: New Dioceses (Transitional Provisions) Measure 1927, s 3 (ii).

4 Ibid s 1 (2) (i); Synodical Government Measure 1969, s 2 (2). The concluding words of this provision, as originally enacted in the Measure of 1927 are 'as if he had been elected by the representative electors in the diocesan conference of that diocese'. These words must be construed in the light of the Synodical Government Measure 1969, which substituted diocesan synods for diocesan conferences and directed that references in any Measure to diocesan conferences should be construed as references to diocesan synods (s. 4 (7)), but which also enacted that members of the House of Laity were in future to be elected, not in the diocesan synod by its members, but by members of the House of Laity of all the deanery synods in the diocese (described as 'diocesan electors'): see the Church Representation Rules, r 29 (2), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865). It seems that in applying the New Dioceses (Transitional Provisions) Measure 1927, s 1 (2) (i), 'representative electors' must be taken to mean diocesan electors as defined in the new legislation, and the words 'in the diocesan conference' must be regarded as no longer operative.

UPDATE

427 Representation on foundation of new bishoprics

TEXT AND NOTES--The New Dioceses (Transitional Provisions) Measure 1927 has been repealed.

NOTE 4--Rule 35(3) (formerly r 29(2)) amended (see PARA 418): SI 1989/2095, SI 1994/3118.

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427A. Establishment of the Archbishops' Council.

There is established an Archbishops' Council, whose objects are to co-ordinate, promote, aid and further the work and mission of the Church of England¹. The Council is to consist of (1) the Archbishops of Canterbury and York; (2) the Prolocutors of the Convocations of Canterbury and York; (3) the chairman and vice-chairman of the House of Laity; (4) two bishops elected by the House of Bishops from among its members; (5) two clerks in Holy Orders elected by the House of Clergy from among its members; (6) two lay persons elected by the House of Laity from among its members; (7) such persons as may be appointed jointly by the Archbishops of Canterbury and York with the approval of the General Synod; (8) one of the Church Estates Commissioners appointed by the Archbishops of Canterbury and York acting jointly². The Archbishops, acting jointly, may appoint not more than six persons as members of the Council, but no such appointment may be made without the approval of the General Synod; and in considering the making of any such appointment (except on the first occasion) the Archbishops must consult the Council and the Appointments Committee of the Church of England³. The archbishops are joint presidents of the Council, and the Archbishop of Canterbury is to preside at meetings⁴. Further provision is made as to the membership, staff, proceedings and incidental powers of the Council⁵.

The Archbishops may by order provide for the transfer to the Council of functions of the Church Commissioners (with certain exceptions), the Central Board of Finance or the Standing Committee of the General Synod or any sub-committees of it⁶.

The Archbishops' Council has the right to introduce legislation to the General Synod⁷.

1 National Institutions Measure 1998 s 1(1). The Measure was brought into force on 1 January 1999 by order dated 14 October 1998 made by the archbishops under s 15. The Council is declared to be established for charitable purposes: s 1(2).

2 Ibid s 1(3), Sch 1 para 1(1). The General Synod may by resolution amend Sch 1 Pt I (paras 1-7): s 1(4), (5).

3 Ibid Sch 1 para 1(2), (3).

4 Ibid Sch 1 paras 2, 3.

5 See ibid Sch 1 paras 3-16 (Sch 1 para 4(2) substituted by the National Institutions Measure 1998 (Amendment) Resolution 2001, SI 2001/3701; 1998 Measure Sch 1 para 9 amended by Church of England (Miscellaneous Provisions) Measure 2006 s 13). As to the transfer of officers from the Council see the National Institutions Measure 1998 s 6, Sch 3.

A person may not be a member (or stand for membership) of more than one of the following bodies at any one time, namely: the Archbishops' Council, the Church Commissioners, the Pensions Board, the Appointments Committee (see PARA 383A) or the Business Committee (see PARA 383B): s 11.

6 See ibid s 5, Sch 2. The National Institutions of the Church of England (Transfer of Functions) Order 1998, SI 1998/1715, transfers functions to the Council relating to: (1) the Dioceses Commission (see PARA 457A); (2) status and appointment of suffragan bishops (see PARA 493); (3) certain statutory boards and committees (see PARA 519); (4) application of statutory provisions concerning care of cathedrals (see PARA 633A.1); (5) establishment of a body to replace the Advisory Board for Redundant Churches (see PARA 1135); (6) making of parochial fees orders (see PARA 1198); (7) making of rules in connection with legal aid (see PARA 1305). The National Institutions of the Church of England (Transfer of Functions) Order 2007, SI 2007/1556, transfers functions of the Central Board of Finance to the Archbishops' Council, and include functions under (a) the Ecclesiastical Commissioners (Loans for Church Training Colleges) Measure 1931 s 1; (b) the Ecclesiastical

Jurisdiction Measure s 62(1); (c) the Church Commissioners (Loans for Theological Colleges and Training Houses) Measure 1964 s 1(a); (d) the Incumbents (Vacation of Beneficiaries) Measure 1977 Sch 2 para 4; and (e) the Church of England (Legal Aid) Measure 1994 s 1(3).

7 National Institutions Measure 1998 s 9(a): see PARA 399.

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427B. Distribution to and application of funds by the Archbishops' Council.

The Church Commissioners must from time to time in general meeting determine the amount of income from their assets which is to be made available to the Archbishops' Council¹ for application or distribution² in the course of such period as may be specified in the determination, and to the extent that the Church Commissioners are satisfied that it is available for application or distribution, to pay that amount to the Council in equal monthly instalments or as otherwise agreed by them and the Council³.

The Council must consider and determine how to apply or distribute such sums, but those sums must not be applied or distributed for any purpose other than one for which the balance in the Church Commissioners' general fund⁴ was available immediately before 1 January 1999⁵ and in applying or distributing those sums the Council must have particular regard to the statutory requirements relating to the making of additional provision for the cure of souls in parishes where such assistance is most required⁶.

Provision is made for the Council and the Church Commissioners acting jointly, after consultation with any body appearing to be significantly affected, to produce a plan which contains an estimate by the Church Commissioners⁷ of the amount of income from their assets available for application or distribution under the provisions described above during a period not exceeding three years, and identifies the purposes for which the sums are to be applied or distributed and the proportion of those sums appropriate for each purpose⁸.

As soon as practicable after the end of each year the Council must cause a certificate to be issued to the Church Commissioners to the effect that the application and distribution of the sums made available by them has been in accordance with these provisions⁹.

1 Ie the Archbishops' Council: as to which see PARA 427A. Before determining the amount to be made available to the Council the Church Commissioners must consult the Council and in making the determination must have regard to any proposals made by the Council: National Institutions Measure 1998 s 2(2). The commissioners must also have regard to any plan produced under s 2(4) (see TEXT AND NOTES 7, 8): s 2(5).

2 Ie under ibid s 2(3): see TEXT AND NOTES 4-6.

3 Ibid s 2(1).

4 As to the general fund see PARA 376.

5 Ie the date on which the National Institutions Measure 1998 was brought into force: see PARA 427A NOTE 1.

6 1998 Measure s 2(3). The statutory requirements are those contained in the Ecclesiastical Commissioners Act 1840 s 67. The Council must also have regard to any plan produced under the 1998 Measure s 2(4) (see TEXT AND NOTES 6, 7): s 2(5).

7 Ie having regard to any recommendation made by the Assets Committee under the Church Commissioners Measure 1947 s 6(3)(b).

8 1998 Measure s 2(4). Any such plan may be amended or replaced in the same manner: s 2(4).

9 Ibid s 2(6).

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427C. Accounts, reports and budgets of the Archbishops' Council.

The accounts of the Archbishops' Council¹ for each year must be audited by a person appointed by the Council with the approval of the General Synod². The auditor's report for any year, together with the accounts for that year, must be laid before the General Synod before the end of June in the following year³.

The Council must cause a report of its work and proceedings during the year in question, including any decisions taken as to its future work, to be laid before the General Synod before the end of June in the following year⁴. The Council must also, at each group of sessions of the General Synod, cause an account of the matters discussed and the decisions taken by it at its meetings held since the previous group of sessions to be laid before the General Synod for its approval⁵.

In each year the Council must prepare a budget indicating its expected income and expenditure for the following year and, before the end of June, cause it to be laid before the General Synod for its approval⁶. In considering the annual budget it is not open to the General Synod to alter the amount of the sums to be made available to the Council by the Church Commissioners⁷ or the proposed application or distribution of those sums⁸.

The General Synod may request reports from the Council on any matter relating to the functions of the Council⁹.

1 As to the Archbishops' Council see PARA 427A.

2 National Institutions Measure 1998 s 3(2). The person appointed must be a person eligible under the Charities Act 1993 s 43(2) (see CHARITIES vol 8 (2010) PARA 350), and is deemed for the purposes of Pt VI of that Act to have been appointed in pursuance of s 43: 1998 Measure s 3(2), (3).

3 Ibid s 3(4).

4 Ibid s 4(1).

5 Ibid s 4(2).

6 Ibid s 4(3).

7 Ie under ibid s 2 (see PARA 427B).

8 Ibid s 4(4).

9 Ibid s 4(5). As to consideration by the General Synod of reports, budgets and other matters under ss 3, 4 see s 9(b); and PARA 398.

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(6) THE PROVINCES

(i) Provincial Organisation

428. The Provinces of Canterbury and York.

A province is the circuit of an archbishop's jurisdiction. There are in England two archbishops, one having jurisdiction in the province of Canterbury and the other in the province of York¹. Each province consists of a number of dioceses², each diocese being split into archdeaconries³, each archdeaconry into deaneries⁴ and each deanery into parishes⁵. The boundaries of the two provinces have been adjusted by Act of Parliament and by Measure⁶. In each province there is a representative assembly of the clergy of the province, known as the convocation⁷.

1 As to the archbishops, see PARA 429 et seq post. As to deans of provinces, see PARA 443 note 1 post. As to registrars of provinces, see PARA 1285 text and note 12 post; as to provincial vicars-general, see PARA 430 note 3 post.

2 For the dioceses within each province, see PARAS 455, 456 post. On this division at one time it was customary to refer to diocesan bishops as the suffragans of the metropolitan: see Co Litt 94A. This certainly accords with the Roman hierarchical view, at the apex of which stands the Pope. It does not accord so closely with the orthodox (and possibly the primitive) conception of the diocese under the bishop as the essential unit, though dioceses may combine to form a church.

3 As to archdeacons, see PARA 496 et seq post.

4 The term 'deanery' is now generally used instead of 'rural deanery', in accordance with the nomenclature of the Synodical Government Measure 1969 (see s 9 (2), where 'deanery' is defined as meaning rural deanery).

5 As to parishes, see PARA 534 et seq post.

6 The principal changes made since the Reformation are under 33 Hen. 8 c. 31 (Bishopricks of Chester and York) (1541), by which the dioceses of Chester and Sodor and Man were severed from the province of Canterbury and united to that of York; and by the Diocese of Southwell (Transfer) Measure 1935, by which the diocese of Southwell was also transferred from Canterbury to York.

7 See PARA 442 et seq post.

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(ii) Archbishops

A. APPOINTMENT AND FUNCTIONS OF ARCHBISHOPS

429. Appointment of archbishops.

The election of an archbishop is carried out by the dean and chapter of the cathedral of the void see in pursuance of a licence granted by the Sovereign under the Great Seal (termed a *congé d'élire*) and a letter missive containing the name of the person to be elected¹. The dean and chapter must act with all speed and celerity, and if they defer the election above twelve days after the delivery to them of the licence and letter missive, the Sovereign may by letters patent nominate and present such person as she thinks able and convenient for the vacant office and dignity². For purposes of confirmation, investiture and consecration³ an appointment must be notified by the Sovereign to the other archbishop and two bishops or else to four bishops within the realm or any of the Queen's dominions which she may assign⁴. Provisions governing the enthronement of archbishops⁵ and the restitution out of the Queen's hands of all possessions and profits spiritual and temporal belonging to the archbishopric and the doing of homage are similar to those which apply on the installation of bishops⁶.

No man can be an archbishop before he is thirty years of age⁷ but, subject to this, there seems to be no restriction on the Queen's statutory power of appointment⁸.

1 Appointment of Bishops Act 1533, s 3. The procedure for the election of archbishops is governed by the same statutory provisions which apply in the case of bishops: see PARA 460 et seq post.

2 Ibid s 3.

3 An archbishop is usually translated from another see, so that as a rule there is no consecration: see Godolphin's Repertorium Canonicum 29, and see PARA 471 post.

4 Appointment of Bishops Act 1533, ss 3, 4. The archbishop must make a declaration of assent, a declaration against simony and an oath of allegiance: s 4; Revised Canons Ecclesiastical, Canon C15 paras 1 (1), 2 (substituted by Amending Canon No. 4); Canon C16 para 1.

5 After election an archbishop is 'enthroned', whereas a bishop is, strictly speaking, 'installed': Godolphin's Repertorium Canonicum 21.

6 Appointment of Bishops Act 1533, s 5. See also PARAS 468, 469 post, where the installation etc. of bishops is discussed.

7 Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons.

8 *R v Archbishop of Canterbury* (1848) 11 QB 483; *R v Archbishop of Canterbury* [1902] 2 KB 503; Appointment of Bishops Act 1533. The reasons are that (1) all archbishoprics and bishoprics of England were founded by the Sovereign of England (Co Litt 94a, 97) and are royal donatives (1 Bl Com (14th Edn) 379, note (7)); and (2) the royal supremacy is recognised by law (see PARA 352 ante). The qualifications for appointment are the same as for bishops, for which see PARA 459 post.

UPDATE

429 Appointment of archbishops

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), the College of Canons performs the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter: Cathedrals Measure 1999 s 5(3).

NOTE 4--The declaration against simony is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

TEXT AND NOTE 8--A man of 70 or over may not be appointed archbishop: Ecclesiastical Offices (Age Limit) Measure 1975 s 1, Schedule.

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430. Jurisdiction and functions of archbishops.

As superintendent of all ecclesiastical matters in his province an archbishop has, throughout the province at all times, metropolitanical jurisdiction¹ to correct and supply the defects of other bishops; and during the time of his metropolitanical visitation² he has jurisdiction as 'Ordinary', except in places and over persons exempt by law or custom³. Each archbishop has his own diocese where he exercises episcopal jurisdiction⁴.

Within his province an archbishop is the principal minister, and to him belong the rights of (1) confirming the election of every person to a bishopric⁵; (2) being the chief consecrator at the consecration of every bishop⁶; (3) receiving such appeals in his provincial court as may be provided by law⁷; (4) holding metropolitanical visitations at times or places limited by law or custom⁸; and (5) presiding in the convocation of the province either in person or by such deputy as he may lawfully appoint⁹. The two archbishops are Joint Presidents of the General Synod¹⁰.

1 It has been questioned whether there is any difference between the two titles 'archbishop' and 'metropolitan'; but it has been said that he is called archbishop as being chief of the other bishops, and metropolitan 'in respect of the number of cities or cathedral churches where the bishoprics are': Godolphin's Repertorium Canonicum 15.

2 As to the metropolitanical visitation, see PARA 431 post.

3 Revised Canons Ecclesiastical, Canon C17 para 2. This jurisdiction is exercised by the archbishop himself, or by a vicar-general, official or other commissary to whom authority in that behalf has been formally committed by the archbishop concerned: see Canon C17 para 3. The office of provincial vicar-general, whose functions include presiding over the confirmation of the election of bishops (see PARA 464 post) must be distinguished from that of diocesan vicar-general (now always held by the chancellor: see PARA 1275 post). The provincial vicars-general are members of the convocations if they are clergymen: see PARA 444 post. For the meaning of 'Ordinary', see PARA 458 post.

4 In Church Assembly or General Synod Measures passed after 1925 'bishop' in relation to the diocese of an archbishop means archbishop: Interpretation Measure 1925, s 3; Synodical Government Measure 1969, s 2 (2).

5 As to the election of a bishop, see PARA 461 post. The business of confirmation is conducted by the archbishop's vicar-general, as to whom see note 3 supra.

6 As to the consecration of bishops, see PARAS 467, 493 post.

7 As to appeals to the archbishop, see PARAS 694-697, 722, 821 post; see also PARA 432 post.

8 As to visitations, see PARA 431 post.

9 Revised Canons Ecclesiastical, Canon C17 para 4. As to the convocations, see PARA 442 et seq post. In the province of Canterbury the Bishop of London, or in his absence, the Bishop of Winchester, has the right to be so appointed; and in their absence the archbishop must appoint some other diocesan bishop of the province: Canon C17 para 4. By ancient custom, no Act is held to be an Act of the convocation of the province unless it has received the archbishop's assent: Canon C17 para 5 (amended by Amending Canon No. 1).

10 Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 4 (1); Revised Canons Ecclesiastical, Canon C17 para 4 (amended by Amending Canon No. 1).

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431. Visitation of bishops and clergy.

An archbishop has authority to visit and inspect the bishops and inferior clergy of his province¹, but any proceedings for offences against the laws ecclesiastical must take the due legal form directed by the Ecclesiastical Jurisdiction Measure 1963², or by the general ecclesiastical law for the time being in force³.

When an archbishop visits his province it is usual for him first to visit his own cathedral and diocese, then in every diocese to begin with the cathedral and proceed thence as he pleases to the other parts of the diocese⁴.

By agreement the Archbishop of Canterbury does not visit the diocese of London⁵.

1 As to visitation by bishops and archdeacons, see PARAS 490-492, 500 post.

2 See PARA 1350 post.

3 See *Re Dean of York* (1841) 2 QB 1, where the Archbishop of York was prohibited from summarily depriving the Dean of York at a visitation without due process under the Church Discipline Act 1840 (repealed); *Sanders v Head* (1843) 2 Notes of Cases 355 at 368. As to the abolition of obsolete jurisdictions, see the Ecclesiastical Jurisdiction Measure 1963, s 82, and PARA 1266 post.

4 Gib Cod 957. For forms of archiepiscopal visitation, inquiries and injunctions (Canterbury and York), see Archbishop Grindal's Remains, Parker Society 121. All deans and chapters are subject to the visitation of the archbishop of the province jure metropolitico, in addition to the bishop's visitation: Stephens, Laws relating to the Clergy 1379. See PARA 639 post.

5 *Gobbet's Case* (1634) Cro Car 339. As to royal peculiars, see PARA 492 post.

UPDATE

431 Visitation of bishops and clergy

NOTE 3--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

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432. Archbishops' miscellaneous powers and duties.

When a bishopric is vacant the archbishop of the province may, by prescription or composition, be entitled to provide for the ecclesiastical administration of the diocese during the vacancy, that is to act as the 'guardian of the spiritualities'¹ (in the same way that the Sovereign is the guardian of the temporalities).

The archbishop presents to livings which a bishop may allow to lapse², and has power to review a bishop's decision withholding approval to the exercise of certain rights of presentation to vacant benefices³.

He is entitled to receive from every bishop holding office within his province the oath of due obedience⁴, and this oath may still be taken during the consecration service⁵.

He may consecrate persons to the office of bishop for the purpose of exercising episcopal functions elsewhere than in England, in which case he may, if he thinks fit, dispense with the oath of due obedience to the archbishop⁶.

Where a see is vacant, or the diocesan bishop is unable because of illness or absence to appoint a deputy⁷, the provincial archbishop may appoint one or more suffragan or assistant bishops or archdeacons of the diocese to perform certain functions⁸, for example in relation to matters arising under the Pastoral Measure 1968⁹ or to transactions concerning parsonage houses or glebe⁹.

Certain functions are assigned to archbishops under the Church Representation Rules¹⁰. Any question which arises whether a church is a church in communion with the Church of England¹¹ is to be conclusively determined for the purposes of those rules by the two archbishops¹². During a vacancy in a diocesan bishopric, or in case of the illness of a diocesan bishop, the provincial archbishop may appoint a person in episcopal orders to exercise the functions of the diocesan bishop under the rules¹³. An archbishop may appoint a commissary and delegate to him all or any of his functions under the rules¹⁴.

The archbishops have certain functions in respect of elections to the Houses of Clergy of the convocations, for example that of directing the formation of electoral areas within a diocese, and that of acting as an appellate authority in the case of an objection¹⁵.

The archbishops in their capacity as such have certain functions under the constitution of the General Synod¹⁶, including the determination of questions as to the interpretation and applicability of provisions of the constitution¹⁷.

In each province there is a court of the archbishop, in which, however, he does not himself sit as a judge¹⁸. In a few instances powers of adjudication are, by specific enactment, exercisable by the archbishop personally¹⁹.

When a bishop (and also, it seems, an archbishop) ministers in any office prescribed by the Book of Common Prayer, he is a minister bound to observe the directions given to the minister in the rubrics of such office²⁰; but the robes of an archbishop at Book of Common Prayer services are the same as those of a bishop²¹.

1 Revised Canons Ecclesiastical, Canon C19 para 2: see PARA 489 post. The archbishop may act in this capacity by and through such person or persons as he may nominate according to the prescription or composition: Canon C19 para 2. Where the right does not belong to the archbishop by prescription or

composition, the guardianship to the spiritualities belongs to the dean and chapter of the cathedral church of the diocese: Canon C19 para 2. As to the guardianship of the spiritualities when the archiepiscopal see is vacant, see PARA 441 post.

2 As to lapse, see PARA 826 post.

3 See the Benefices (Exercise of Rights of Presentation) Measure 1931, s 3 (2) (ii) proviso (b); *R v Archbishop of Canterbury, ex parte Morant* [1944] KB 282, [1944] 1 All ER 179, CA; and PARA 818 post.

4 The form of oath is given in the Book of Common Prayer, Form of Ordaining and Consecrating of an Archbishop or Bishop, 'In the name of God, Amen. I, A.B., chosen bishop of the Church and See of... do profess and promise all due reverence and obedience to the Archbishop and to the Metropolitan Church of ... and to their Successors: So help me God, through Jesus Christ'.

5 Clerical Subscription Act 1865, s 12.

6 Bishops in Foreign Countries Act 1841, ss 1, 3; Colonial Clergy Act 1874, s 12; see also PARA 320 ante. Overseas clergymen may only officiate in a province by permission of the archbishop: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 1 (1); Revised Canons Ecclesiastical, Canon C17 para 6: see PARA 669 post.

7 *Ie* under the Pastoral Measure 1968, s 85 (1).

8 *Ibid* s 85 (3), (4): see PARA 473 post.

9 See *ibid* s 85 (2).

10 As to the Church Representation Rules, see PARA 389 ante.

11 For the meaning of 'church in communion with the Church of England', see PARA 313 ante.

12 Church Representation Rules, r 44 (4), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

13 Church Representation Rules, r 43 (7), (8) (added by S.I. 1973 No. 1865). If a person appointed under these rules becomes ill and unable to act the archbishop may revoke the appointment and make a new one: r 43 (9) (added by S.I. 1973 No. 1865). If such a person is a member of the House of Clergy of the diocesan synod, his membership of the House is suspended during the period for which the appointment has effect: r 43 (11) (added by S.I. 1973 No. 1865).

14 *Ibid* r 43 (10) (added by S.I. 1967 No. 1865). If a person so appointed is a member of the House of Clergy of the diocesan synod, his membership of that House is suspended during the period for which the delegation has effect: r 43 (11) (added by S.I. 1973 No. 1865).

15 See PARAS 446, 449 post.

16 *Ie* under the Synodical Government Measure 1969, Sch. 2.

17 *Ibid* s 2 (1), Sch. 2, arts. 8 (1A), 12 (2); Synodical Government (Amendment) Measure 1974 s 2; Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 1 para 3. See also the Synodical Government Measure 1969, Sch. 2, arts. 3 (3), 8 (1); Church of England (Worship and Doctrine) Measure 1974, Sch. 1 para 3. These functions are normally exercisable by the archbishops jointly, but may, during the absence abroad or incapacity through illness of one archbishop or a vacancy in one of the sees be exercised by the other archbishop alone: Synodical Government Measure 1969, Sch. 2, art. 13. The functions here referred to are distinct from those assigned to the archbishops in their capacity as Joint Presidents of the General Synod.

18 See PARA 1285 post.

19 See eg the Pluralities Act 1838, ss 43, 49, 54 (appeal against enforcement of residence: see PARAS 694-697 post), s 98 (appeal against termination of curate's licence: see PARA 722 post); Benefices Act 1898, s 3 (appeal against refusal to institute: see PARA 821 post).

20 *Read v Bishop of Lincoln* (1889) 14 PD 148.

21 See PARA 477 post.

UPDATE

432 Archbishops' miscellaneous powers and duties

TEXT AND NOTE 2--As to the abrogation of the rules as to lapse, see the Patronage (Benefices) Measure 1986 s 31 (see PARA 826-830).

NOTE 3--Now *ibid* s 13(5) (see PARA 818A.7).

TEXT AND NOTES 7-9--Repealed: Church of England (Miscellaneous Provisions) Measure 1976, Schedule Pt II.

NOTE 12--Rule 44(4) renumbered as r 54(5); SI 1980/178, SI 1994/3118.

NOTES 13, 14--Rule 53(7), (10), (11) (formerly r 43(7), (10), (11)) amended: SI 1980/178; 1994/3118. The powers of an archbishop under r 53 are, as respects the diocese in Europe (see PARAS 316, 455), exercisable by the Archbishop of Canterbury: r 53(12); Diocese in Europe Measure 1980 s 2, Sch 2.

NOTE 19--1838 Act s 43 amended: SI 2005/3129.

1838 Act s 98 repealed: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(2).

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433. Special privileges of the Archbishop of Canterbury.

The Archbishop of Canterbury has the style of 'Primate of All England and Metropolitan'¹, and he has the privilege of crowning the Kings and Queens regnant of England². He has the right to grant throughout both provinces all those licences, dispensations and faculties which were formerly within the Pope's jurisdiction³ and by virtue of this right he grants special marriage licences⁴ and confers degrees⁵ 'in prejudice of the universities'⁶. The archbishop, however, has no power to confer titles, ecclesiastical or otherwise, that belong solely to the Crown⁷.

The archbishop is a Lord of Parliament⁸ with a seat in the House of Lords, and precedence next after the Royal Family and before the Lord Chancellor⁹. He is ex officio Joint President of the General Synod¹⁰ and chairman of the Church Commissioners¹¹.

1 Revised Canons Ecclesiastical, Canon C17 para 1.

2 1 Bl Com (14th Edn) 381. As to the coronation ceremony, see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 20.

3 Ecclesiastical Licences Act 1533, ss 2, 4; Revised Canons Ecclesiastical, Canon C17 para 7. These licences and dispensations, being confirmed by the Queen's authority, have force and authority throughout England: Canon C17 para 7. These are commonly called the legatine powers because they were delegated by the Pope to the papal legate. See also PARA 1273 post (Court of Faculties).

4 See PARA 1023 post.

5 The archbishop may confer all the usual degrees, with or without examination and on the laity as well as the clergy. For a discussion as to the exercise of this right by Archbishop Lang, see 87 H.L. Official Report 838. These degrees (known as 'Lambeth degrees') confer no right to membership of any university. The recipient is entitled to wear the academic costume of the university of which the archbishop himself is a member. The Lambeth degree in medicine does not entitle the holder to registration as a medical practitioner: Medical Act 1956, s 7, Sch. 3; Medical Act 1969, ss 20, 23 (1), Sch. 1 para 13, Sch. 2. As to the registration of medical practitioners see MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 34 et seq.

6 1 Bl Com (14th Edn) 381.

7 Ecclesiastical Titles Act 1871; *Keet v Smith* (1876) 1 PD 73 at 75, PC, per Lord Cairns LC.

8 Co Litt 97a; Cruise on Dignities 53. Godolphin's Repertorium Canonicum 13 says he is the first peer of the realm, but Cruise on Dignities 53 says archbishops and bishops are not styled peers of the realm.

9 Burke's Peerage, Table of Precedence.

10 See PARA 390 ante.

11 See PARA 364 ante.

UPDATE

433 Special privileges of the Archbishop of Canterbury

NOTE 5--Medical Acts consolidated in Medical Act 1983; see ss 3, 4.

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434. Special privileges of the Archbishop of York.

The Archbishop of York claims the special privilege of crowning a Queen Consort and of being her chaplain, but it would seem that he is not entitled to these privileges as of right, although he has sometimes exercised them¹. He has the special style of 'Primate of England and Metropolitan'², and has precedence over all dukes (not being of the blood royal), being placed immediately after the Lord Chancellor³. He is also a Lord of Parliament, and by statute has his allotted seat in the House of Lords next after the Archbishop of Canterbury⁴. He is, ex officio, Joint President of the General Synod⁵.

1 A petition to be granted these privileges was presented by the then archbishop (Dr Maclagan) to the Court of Claims held before the coronation of Edward VII. The point, however, was not decided, His Majesty accepting the Archbishop of Canterbury's suggestion that the Archbishop of York should as a matter of grace be allowed to crown Queen Alexandra. The Archbishop of York had also made a claim to act for all purposes in place of the Archbishop of Canterbury, if absent, but this was likewise withdrawn: see Wollaston, *Coronation Claims* (2nd Edn) 148, 151 note 1. As to the Court of Claims, see *CROWN AND ROYAL FAMILY* vol 12(1) (Reissue) PARAS 23-26. The claim was not made at the coronations of George V and George VI, when the Archbishop of Canterbury crowned Queen Mary and Queen Elizabeth respectively. For the history of the struggle for precedence between Canterbury and York, see Makower, *Constitutional History of the Church of England* (English translation) 281 et seq.

2 Godolphin's *Repertorium Canonicum* 14; Revised Canons Ecclesiastical, Canon C17 para 1.

3 Burke's *Peerage*, Table of Precedence.

4 House of Lords Precedence Act 1539, s 3: see PARA 433 ante, and *PARLIAMENT* vol 78 (2010) PARA 832.

5 See PARA 390 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/A. APPOINTMENT AND FUNCTIONS OF ARCHBISHOPS/435. Status and emoluments of archbishops.

435. Status and emoluments of archbishops.

In most respects¹ the two archbishops are of equal and independent position and authority; both are alike subject to the Queen as their immediate superior.

Like other bishops an archbishop is supposed by an ancient fiction to be wedded to his see². Hence by custom he still impales the arms of his see, his own arms taking the place which would ordinarily be occupied by his wife's³. He also drops his own surname and signs his Christian name and that of his see, using the Latin abbreviation⁴. He is sued by his Christian name with the addition of his name of office. He is a corporation sole with perpetual succession⁵ and a seal⁶.

The archbishops are dignitaries⁷ and members of the Privy Council⁸, and they hold other important public offices.

At the present time in lieu of the former statutory incomes⁹ payable to the Archbishops of Canterbury and York there is payable to the Archbishop of Canterbury a reduced stipend of £7,500 a year and to the Archbishop of York a reduced stipend of £5,000 a year, or, in each case, such greater sum as the Church Commissioners may from time to time determine, together with certain allowances¹⁰. Lambeth Palace and the other archiepiscopal residences are vested in the Church Commissioners¹¹.

1 For exceptions, see PARAS 433, 434 ante.

2 Gib Cod 118.

3 See Burke's Peerage.

4 Thus the present Archbishop of Canterbury signs 'Donald Cantuar:' and the present Archbishop of York signs 'Stuart Ebor:'.

5 1 Roll Abr 512.

6 Godolphin's Repertorium Canonicum 27. The ecclesiastical courts being now the Queen's courts, all ecclesiastical Ordinaries ought to have the Queen's arms engraved on their seal of office, but the Archbishop of Canterbury may use his own seal: Godolphin's Repertorium Canonicum 28.

7 *Boughton v Gousley* (1599) Cro Eliz 663. A dignitary is known (1) from the administration of ecclesiastical affairs with jurisdiction; (2) from the name and preference which he has in the choir and chapter; and (3) from the custom of the place: 2 Burn's Ecclesiastical Law 83.

8 Archbishops may have a prescriptive right to membership: see 2 Todd's Parliamentary Government 161.

9 See the Ecclesiastical Commissioners Act 1836, preamble; Ecclesiastical Commissioners Act 1860, s 3 (repealed).

10 This is effected by schemes, confirmed by Order in Council, under the Episcopal Endowments and Stipends Measure 1943, s 1. See the Order in Council gazetted 28th February 1956 (York) and 4th August 1961 (Canterbury). The stipends have since been raised from time to time, but the archbishops (and bishops) from time to time forego part of their stipends if in the circumstances they think it proper.

11 See the schemes referred to in note 10 supra. As to the cost of maintaining Lambeth Palace, see the Ecclesiastical Commissioners Act 1866, ss 7, 8; Ecclesiastical Commissioners Measure 1926, s 6.

UPDATE

435 Status and emoluments of archbishops

NOTE 9--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/436. Resignation of archbishop.

B. RETIREMENT; VACANCY

436. Resignation of archbishop.

Archbishops have always had the right to resign¹. Resignation is subject to statutory provisions which are applicable where the resignation is tendered for certain specified reasons². A resignation must be made to a superior³; an archbishop therefore can only resign to the Sovereign herself⁴. The fact of the resignation and the date from which it is to take effect are declared by Order in Council.

1 Such resignations were formerly very rare, but have occurred more frequently in recent times.

2 See PARAS 437, 438 post.

3 Gib Cod 822.

4 1 BI Com (14th Edn) 382.

UPDATE

436 Resignation of archbishop

TEXT AND NOTES--Where an archbishop wishes to resign his archbishopric he must tender his resignation to Her Majesty in a written instrument in the prescribed form and Her Majesty may by Order in Council declare the archbishopric vacant as from a date specified in the Order, which must not be earlier than the date of the Order: Bishops (Retirement) Measure 1986 s 4. 'Prescribed' means prescribed by the Vicars-General of the provinces of Canterbury and York acting jointly: s 10(1). Where an archbishopric has been declared vacant under the 1986 Measure, any other preferment held by the archbishop must also be vacated unless Her Majesty makes a declaration to the contrary: s 8(1). 'Preferment' includes an archbishopric, a bishopric, archdeaconry, deanery or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty: s 10(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/437. Retirement for incapacity.

437. Retirement for incapacity.

Special provision is made for the voluntary or compulsory retirement of an archbishop in case of incapacity¹. If it appears to the two senior diocesan bishops of his province² that the archbishop is incapacitated by physical or mental disability from the due performance of his episcopal³ duties, the archbishop may, and if so requested by these two senior bishops with the concurrence of such three other bishops as the senior bishops have selected from a panel⁴ must, tender to the Sovereign the resignation of his archbishopric⁵. Before the archbishop is so requested to resign the two senior bishops must send notice to him of their intention to make the request and the archbishop has, on receipt of the notice, the same remedies as a bishop in the like case⁶.

If the archbishop to whom such a request is sent refuses or fails within two months to comply with the request or is prevented by his infirmity from doing so, the two senior bishops may declare the archbishopric vacant, although this declaration does not take effect unless and until it is confirmed by Order in Council⁷.

1 Bishops (Retirement) Measure 1951, ss 1, 11 proviso.

2 In the province of Canterbury the senior bishops are London and then Winchester; in the province of York the Bishop of Durham is always the senior bishop. After these bishops seniority for the purposes of the Bishops (Retirement) Measure 1951 is determined by length of service as a diocesan bishop within the province; and any question as to the relative seniority is determined by the archbishop, whose decision is final: s 16 (2).

3 It would seem that incapacity to perform archiepiscopal duties would not be a matter for the bishops, but for the Crown and its advisers.

4 This is the panel of bishops appointed by the Upper House of the convocation of the province in question for the purposes of the Bishops (Retirement) Measure 1951: s 16 (1).

5 Ibid ss 1 (1), 11 proviso.

6 Ibid ss 1 (1) proviso, 11 proviso. For the bishop's remedies, see PARA 486 post.

7 Ibid ss 1 (2), 11 proviso. By virtue of s 2 the archbishop is, for purposes of the Clergy Pensions Measure 1961, deemed to have retired by reason of infirmity on the date on which the declaration takes effect: cf. para 440 post.

UPDATE

437 Retirement for incapacity

TEXT AND NOTES--Replaced by Bishops (Retirement) Measure 1986 s 6. Reference is now made merely to 'duties' rather than 'episcopal duties': s 6(1). The concurrence of the archbishop of the other province is required: s 6(1). Where an archbishopric has been declared vacant under the 1986 Measure any other preferment held by the archbishop must also be vacated unless Her Majesty makes a declaration to the contrary: s 8(1). For meaning of 'preferment' see PARA 436.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/438. Retirement if change of administration is desirable.

438. Retirement if change of administration is desirable.

If it appears to an archbishop that, in the interests of his diocese, a change of administration is desirable, he is required to tender his resignation to the Sovereign¹.

¹ Bishops (Retirement) Measure 1951, ss 3, 11 proviso. As the Sovereign, to whom the resignation is tendered, is advised by Ministers of State and not by the bishops, it is doubtful whether in this instance any functions are exercisable by the two senior diocesan bishops of the province. Presumably, however, a declaration of vacancy and confirmation by Order in Council are necessary (see ss 13, 14). Upon acceptance of his resignation under s 3, the archbishop, if he has not attained the retiring age, is entitled to a pension under the Clergy Pensions Measure 1961 of an amount equal to three-quarters of the pension to which he would have been entitled under the Measure if he had retired by reason of infirmity: Bishops (Retirement) Measure 1951, ss 4, 11; Clergy Pensions Measure 1961, s 47, Sch. 2; and see PARA 440 post.

UPDATE

438 Retirement if change of administration is desirable

TEXT AND NOTES--Repealed: Bishops (Retirement) Measure 1986 Schedule.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/439. Age for retirement.

439. Age for retirement.

There is no compulsory retirement age for archbishops¹, but a pension is payable to an archbishop who resigns on attaining the age of seventy².

¹ Proposals have, however, been made that an age limit of seventy should be introduced, and the General Synod at its Spring Session 1974 gave general approval to a Measure to this end.

² See PARA 440 post.

UPDATE

439 Age for retirement

Age limit of 70 introduced by Ecclesiastical Offices (Age Limit) Measure 1975. The Queen may authorise continuance in office for a period not exceeding one year: s 2.

Not less than six months before the date on which an archbishop is required to vacate his office in accordance with the 1975 Measure, the archbishop must tender his resignation to Her Majesty in a written instrument in the prescribed form and Her Majesty may by Order in Council declare the archbishopric vacant as from that date or, if her Majesty decides to exercise Her discretion under s 2, as from such later date as Her Majesty may determine: Bishops (Retirement) Measure 1986 s 5. As to the meaning of 'prescribed' see PARA 436. Where an archbishopric has been declared vacant under the 1986 Measure any other preferment held by him must also be vacated unless Her Majesty makes a declaration to the contrary: s 8(1). For meaning of 'preferment' see PARA 436.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/440. Archbishops' pensions.

440. Archbishops' pensions.

An archbishop who resigns his archbishopric on or after attaining the age of seventy years after having performed a qualifying period of pensionable service¹ of forty years or more is entitled to a retiring pension of £2,000 a year². If he retires at an earlier age by reason of infirmity, the rate of pension is reduced by 1 per cent for each year by which his age is less than the retiring age³.

1 For the meaning of 'qualifying period of pensionable service', see PARA 742 post.

2 Clergy Pensions Measure 1961, s 1, Sch. 1, Part 1.

3 Ibid Sch. 1, Part II; see also the Clergy Pensions (Amendment) Measure 1972, s 1 (2) (a). For the meaning of 'retiring age', see PARA 743 note 2 post.

UPDATE

440 Archbishops' pensions

TEXT AND NOTES--Retiring age is now sixty-five years and the qualifying period thirty-seven years: Church of England Pensions Regulations 1988, SI 1988/2256.

A guaranteed minimum pension is now payable notwithstanding that a qualifying period of service has not been performed: SI 1988/2256, see PARA 742.

TEXT AND NOTE 2--1961 Measure Sch 1 replaced: SI 1988/2256.

TEXT AND NOTE 3--Revoked: SI 1977/1146; SI 1985/2081.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(ii) Archbishops/B. RETIREMENT; VACANCY/441. Vacancy of archbishopric.

441. Vacancy of archbishopric.

An archbishopric may become vacant by death, deprivation¹, translation², resignation or retirement³.

When an archbishopric is vacant the dean and chapter of the metropolitan church are the guardian of the spiritualities, not the Sovereign or the other archbishop⁴. Their duties, which continue until the new archbishop is elected and confirmed⁵ (or appointed by letters patent), consist of the exercise of the spiritual jurisdiction of the province and diocese during the vacancy⁶; and they have the power of receiving presentations to, and of admitting and instituting to, benefices, but they cannot consecrate or ordain or present to vacant benefices or confirm a lease⁷.

During a vacancy of the see of Canterbury the dean and chapter, as guardian of the spiritualities, are empowered under their name and seal to grant all such licences and dispensations throughout both provinces as may be granted by the archbishop under the Ecclesiastical Licences Act 1533⁸.

1 BI Com (14th Edn) 382. See also PARAS 1373, 1374 post

2 The archbishopric becomes vacant on confirmation to the new see: *Evans and Kiffins v Askwith* (1627) W Jo 158 at 160, 162.

3 The archbishopric becomes vacant on the date fixed by Order in Council: see PARA 436 et seq ante.

4 Godolphin's Repertorium Canonicum 41; 2 Roll Abr 223; Revised Canons Ecclesiastical, Canon C19 para 1. However, the functions of an archbishop under the Church Representation Rules (see PARA 432 ante) are, during a vacancy in that archbishopric, exercisable by the other archbishop: r 43 (6), contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865).

5 Gib Cod 114.

6 Revised Canons Ecclesiastical, Canon C19 para 1.

7 Godolphin's Repertorium Canonicum 21, 40. As to the guardian of the temporalities, see PARA 488 post.

8 See PARA 433 ante, 1023 post.

UPDATE

441 Vacancy of archbishopric

NOTE 4--Rule 43 now r 53; SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/442. History of the convocations.

(iii) Convocations

442. History of the convocations.

Each of the provinces of the Church of England has a representative assembly of the clergy¹, known as the convocation of the province. The history² of these bodies goes back to the provincial synods of the mediaeval period. They continued in existence after the Reformation; but by a statute of Henry VIII it was enacted that the clergy must not assemble in convocation without the authority of the Sovereign's writ, nor make, promulge or execute canons without the royal assent and licence, or in contravention of the royal prerogative or of the customs, laws or statutes of the realm³. Early in the eighteenth century the activity of the convocation was suspended, and they did not meet again for the transaction of business until the middle of the nineteenth century. In the present century the convocations have continued to exist side by side with a new legislative body which includes representatives of the laity, that is, the Church Assembly (now the General Synod). Their distinctive character and importance have, however, been much diminished, especially in consequence of the transfer (in 1970) of the power of making canons from the convocations to the General Synod⁴. The Houses of Bishop and Clergy of the General Synod are constituted by the membership of the Upper and Lower Houses respectively of the two convocations⁵.

1 1 BI Com (14th Edn) 280, note (24). Certain dignitaries are members ex officio: see PARA 444 post.

2 See 1 BI Com (14th Edn) 279; Lathbury, *History of Convocation* 77-117; Stubbs, *History of Convocation* (edited by W. H. Hutton); Makower, *Constitutional History of the Church of England* (English translation) 352 et seq; and *R v Archbishop of York* (1888) 20 QBD 740. See also Kemp, *Counsel and Consent* (SPCK 1961).

3 Submission of the Clergy Act 1533, ss 1, 3; cf. the Synodical Government Measure 1969, s 1 (3).

4 See PARAS 384, 385 ante. As to the continuing functions of the convocations, see PARAS 452, 453 post.

5 See PARA 390 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/443. Summoning and dissolution of convocations.

443. Summoning and dissolution of convocations.

The Convocations of Canterbury and York may be called together and dissolved at such times as Her Majesty may determine¹ without regard to the time at which Parliament is summoned or dissolved². Unless it is sooner dissolved pursuant to Her Majesty's directions, a convocation stands dissolved at the expiration of the period of five years from the date for which it was called together³. It is not dissolved by the demise of the Crown⁴. After dissolution of the convocations, action is to be taken to secure that the new convocations are called together as soon as may be convenient⁵. The dissolution and calling together of the convocations have the effect of dissolving and bringing into being the General Synod⁶.

1 Both the summoning and the dissolution are effected in pursuance of the Queen's writ, which is addressed to the appropriate archbishop: see the Crown Office (Writs for Dissolving and Summoning Convocations) Rules 1970, S.I. 1970 No. 821, Schedule (amended by S.I. 1975 No. 802), made under the Crown Office Act 1877, s 3). Upon receipt of the Queen's writ requiring him to call together the convocation, the appropriate archbishop issues his mandate, thus instituting the process whereby members are cited to appear at the place appointed. In the province of Canterbury the archbishop's mandate is sent to the Bishop of London, who is the dean of that province, and he is required to cite the other diocesan bishops, and by them the rest of the clergy. In the province of York (which apparently has no dean) the archbishop sends his mandate to each bishop direct, requiring him to cite the clergy. During a vacancy in an archbishopric the guardian of the spiritualities (see PARA 441 ante) can issue the mandate: 3 Wilkins' Concilia Magnae Britanniae et Hiberniae 871.

2 Church of England Convocations Act 1966, s 1 (1). Before this enactment the life of the convocations had been regarded as linked with that of Parliament, but the provisions of s 1 (1) are expressed to have effect notwithstanding any custom or rule of law to the contrary.

3 Ibid s 1 (2).

4 Ibid s 1 (4).

5 Ibid s 1 (3).

6 Synodical Government Measure 1969, ss 1 (4), 2 (1), Sch. 2, art. 3 (2): see PARA 395 ante.

UPDATE

443 Summoning and dissolution of convocations

NOTE 1--1970 Rules now replaced by Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730 which allows appropriate modifications to be made to the prescribed wording of writs of summons and dissolution.

TEXT AND NOTE 3--1966 Act s 1(2) amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/444. Houses of convocation.

444. Houses of convocation.

In each province there is an Upper House and a Lower House of the convocation of the province¹.

The Upper House of each province consists of the archbishop, the diocesan bishops of the province, and a prescribed number² of suffragan bishops of the province elected³ by all the suffragan bishops of the province⁴. Where a person so elected ceases to be eligible for membership of the Upper House he is deemed to have vacated his seat⁵.

The Lower House of Canterbury consists of (1) ten persons elected by and from among the deans and provosts of all the cathedral churches in the province and the Deans of Westminster and Windsor⁶; (2) either the Dean of Jersey or the Dean of Guernsey⁷; (3) one archdeacon in each diocese⁸; (4) the Chaplain of the Fleet, the Chaplain-General of the Forces and the Chaplain-in-Chief (Royal Air Force)⁹; (5) proctors of the clergy¹⁰, of whom a number not exceeding 130 are elected for the dioceses¹¹ and four are elected for universities in the province¹²; (6) one person chosen by and from among the clerical members of religious communities in the province¹³; (7) each of the following, if a clergyman: the Dean of the Arches and Auditor¹⁴, the vicar-general of the province¹⁵ and the Third Church Estates Commissioner¹⁶; and (8) any persons who may be duly co-opted¹⁷.

The Lower House of York consists of (a) five persons elected by and from among the deans and provosts of all the cathedral churches in the province¹⁸; (b) the Archdeacon of Man and one archdeacon in each diocese other than that of Sodor and Man¹⁹; (c) proctors of the clergy²⁰, of whom a number not exceeding sixty-one are elected for the dioceses²¹ and two are elected for universities in the province²²; (d) one person chosen by and from among the clerical members of religious communities in the province²³; (e) the vicar-general of the province, if he is a clergyman²⁴; and (f) any person who may be duly co-opted²⁵.

A suffragan bishop is not qualified to be elected, chosen or co-opted to be a member of the Lower House or entitled to elect or choose a member of that House, and any member of that House who is appointed suffragan bishop is deemed to have vacated his seat²⁶.

1 BI Com (14th Edn) 279. The members of the Upper House also form the House of Bishops, and those of the Lower House the House of Clergy, in the General Synod: see PARAS 390, 416 ante. A convocation has power to join to these two Houses, on occasions, a House of Laity: see PARA 445 post.

2 I.e. six in the province of Canterbury and three in the province of York: Revised Canons Ecclesiastical, Canon H3 paras 1, 2 (added by Canon promulgated 4th February 1975), made under the Synodical Government (Amendment) Measure 1974, s 1 (1). See also PARA 416 ante.

3 They are to be elected in such manner as may be prescribed by rules made under Revised Canons Ecclesiastical, Canon H3: Canon H3 paras 1 (b), 2 (b). The power to make rules is exercisable by the General Synod in accordance with its standing orders: Canon H3 para 5.

4 Ibid Canon H3 paras 1, 2.

5 Ibid Canon H3 para 3. An election to fill a casual vacancy must be conducted in the same manner as an ordinary election (Canon H3 para 4), although a casual vacancy which occurs less than twelve months before an ordinary election is to be held is not to be filled unless the archbishop so directs (Canon H3 para 4 proviso).

6 Ibid Canon H2 para 1 (a) (Canterbury). Canon H2 was added by Canon promulgated 7th October 1969. It is printed as a single canon, combining the texts of the canons made by the two convocations and containing some provisions which are common to both provinces and some which apply either to Canterbury or York alone.

The power to make canons for the amendment of the constitutions of the Lower House is now vested in the General Synod: Convocations of the Clergy Measure 1920; Synodical Government Measure 1969, s 1 (5) (a).

The persons referred to in the text are to be elected in the manner prescribed by the Rules made under Canon H2, contained in Opinions of the Legal Board (5th Edn 1973) I/11-22: Rules made under Canon H2, PARA.1 (a); see rr 1-6. The presiding officer concerned with the election is the registrar of the province or a person appointed by him: r 2. The presiding officer's expenses must be paid out of the General Synod Fund: rr 37 (Canterbury), 35 (York). The power to make rules is exercisable by the General Synod in accordance with its standing orders: Canon H2 para 10. See also Canon H2 para 11.

7 Ibid Canon H2 para 1 (b) (Canterbury). The Dean of Jersey and the Dean of Guernsey are to serve alternately: see the Rules made under Canon H2, rr 7, 8 (Canterbury).

8 Revised Canons Ecclesiastical, Canon H2 para 1 (c) (Canterbury), by which the archdeacon is to be appointed in the manner prescribed by the Rules made under Canon H2, rr 9, 10 (Canterbury). The bishop issues his mandate to the archdeacons of the diocese and, if they all agree on the choice, he appoints the one so chosen; in default of such agreement he appoints such one of them as he thinks fit: f. 9 (Canterbury).

9 Revised Canons Ecclesiastical, Canon H2 para 1 (d) (Canterbury). As to these chaplains, see PARA 727 et seq post.

10 Ibid Canon H2 para 1 (e) (Canterbury).

11 As to the election of proctors for dioceses, see PARA 446 post.

12 As to the election of proctors for universities, see PARA 447 post.

13 Revised Canons Ecclesiastical, Canon H2 para 1 (f) (Canterbury), by which the choice is to be made in the manner prescribed by the Rules made under Canon H2. The electors are clergymen of the Church of England who are members of a religious community having its mother house in the province, and they must themselves be resident in one or other of the two provinces: rr 27, 28 (Canterbury). Candidates must be qualified electors who have been admitted to priest's orders: r 30 (b) (Canterbury). The presiding officer is the registrar of the province or a person appointed by him: r 29 (Canterbury). The presiding officer's expenses must be paid out of the General Synod Fund: rr 37 (Canterbury), 35 (York). For other provisions relating to these elections, see rr 27-33 (Canterbury).

14 As to the Dean of the Arches and Auditor, see PARA 1286 post.

15 As to the vicar-general, see PARA 430 note 3 ante.

16 Revised Canons Ecclesiastical, Canon H2 para 1 (g) (Canterbury) (added by Amending Canon No. 2). As to the Church Estates Commissioners, see PARAS 379, 380 ante.

17 Ibid Canon H2 para 1 (Canterbury). The Lower House of the Convocation of Canterbury has power to co-opt not more than two persons, being clergymen in priest's orders, to be members of that House, and may fix a period of membership for such a member which is shorter than the life of convocation: Canon H2 para 12.

18 Ibid Canon H2 para 1 (a) (York). As to their election, see Rules made under Canon H2, rr 1-6, and cf. note 6 supra.

19 Revised Canons Ecclesiastical, Canon H2 para 1 (b) (York). As to their appointment, see Rules made under Canon H2, rr 7, 8 (York), which are similar to rr 9, 10 (Canterbury): cf. note 8 supra.

20 Revised Canons Ecclesiastical, Canon H2 para 1 (c) (York).

21 As to the election of proctors for the dioceses, see PARA 446 post.

22 As to the election of proctors for the universities, see PARA 447 post.

23 Revised Canons Ecclesiastical, Canon H2 para 1 (d) (York). As to the choice of representatives, see the provisions cited in note 13 supra, which apply equally to the Convocation of York, and Rules made under Canon H2, rr 25-29 (York).

24 Revised Canons Ecclesiastical, Canon H2 para 1 (e) (York) (added by Amending Canon No. 2). As to the vicar-general, see PARA 430 note 3 ante.

25 Ibid Canon H2 para 1 (York). As to the power to co-opt members, see Canon H2 para 12, and the provisions set out in note 17 supra, which apply equally to the Convocation of York, except that in York only one member may be co-opted. The General Synod has general power to make canons to amend the constitution of

the Lower House: Convocations of the Clergy Measure 1920, s 1; Synodical Government Measure 1969, s 1 (5) (a).

26 Revised Canons Ecclesiastical, Canon H2 para 1A (added by Amending Canon No. 2). For a saving in respect of suffragan bishops who were members of either Lower House immediately before 4th February 1975, see Amending Canon No. 2 para 6. This provision was made under the Synodical Government (Amendment) Measure 1974, s 1 (2).

UPDATE

444 Houses of convocation

TEXT AND NOTES 2-5--For purposes of Canon H3 and any rules made under it, the diocese in Europe (see PARAS 316, 455) is deemed to be diocese in the province of Canterbury: Canon H3 para 1; Diocese in Europe Measure 1980 s 1, Sch 1 para 1; Amending Canon No 8.

TEXT AND NOTES 6-17--For the purpose of Canon H2 and any rules made under it, the diocese in Europe (see PARAS 316, 455) is deemed to be a diocese in the province of Canterbury; and references to a diocese are to be construed accordingly, except in canon H2 para 1(c); see TEXT AND NOTES 8: Canon H2 para 1; Diocese in Europe Measure 1980 s 1, Sch 1 para 2; Amending Canon No 8.

TEXT AND NOTE 6--Now the deans and provosts of all the cathedral churches in the province and the Deans of Westminster, Windsor and Gibraltar: Canon H2 para 1 (a); Diocese in Europe Measure 1980 s 1, Sch 1 para 2; Amending Canon No 8. Canon H2 para 11 revoked: Amending Canon No 7.

NOTES 17, 25--Former Canon H2 para 12 renumbered para 11: Amending Canon No 7.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/445. Power to add a House of Laity.

445. Power to add a House of Laity.

A convocation may, by its standing orders or otherwise, make provision for joining to its two Houses, at such sittings and for the purposes of such of its functions as it may determine, a House of Laity¹ composed of the following members of the House of Laity of the General Synod²: (1) those who are elected to the General Synod for areas in the province³; (2) such of the ex officio and co-opted members of that House as may be allocated to the province for the purposes of this provision by the President and the Prolocutor of the House of the convocation and the Prolocutor and Pro-prolocutor of the House of Laity of the General Synod⁴; and (3) the member chosen by the lay members of religious communities in the province⁵.

1 A House of Laity so joined to the two Houses of a convocation has no power to vote on any matter referred to the convocation under the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 7 (the constitution of the General Synod), or any matters in respect of which powers are exercisable by the convocation in accordance with s 3: see Revised Canons Ecclesiastical, Canon H1 para 3 proviso. This canon was set out in the Synodical Government Measure 1969, Sch. 1, and was added by Canon promulgated 7th October 1969.

2 As to the House of Laity of the General Synod, see PARA 418 et seq ante.

3 Revised Canons Ecclesiastical, Canon H1 para 3 (a).

4 Ibid Canon H1 para 3 (b).

5 Ibid Canon H1 para 3 (c).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/446. Election of proctors for dioceses.

446. Election of proctors for dioceses.

Each diocese¹ in a province is an electoral area, and the number of proctors elected for it must be in such proportion to the number of electors in that diocese as is determined from time to time by the General Synod². This is, however, subject to (1) limitation of the total number of proctors elected for all the dioceses in the province³; (2) the requirement that no diocese is to have fewer than three proctors (except the diocese of Sodor and Man which has one proctor)⁴; and (3) a provision empowering the archbishop of the province, on the petition of the electors in any diocese, to divide the diocese into electoral areas and to assign a number of proctors to each area from the number allowed to the whole diocese, the division and assignment being so made that no electoral area will have fewer than three proctors and that the number assigned to each area will be proportionate to the number of electors within that area⁵.

The electors are, in the case of an electoral area consisting of a diocese or part of a diocese, all clergymen exercising the office of assistant bishop in the area or beneficed in the area, or holding office in a cathedral church in the area, or (in the case of Canterbury) holding office in one of the collegiate churches of Westminster and Windsor⁶ if situated in the area, or licensed under seal by the diocesan bishop and resident in the area, not being suffragan bishops, deans or provosts, archdeacons, forces chaplains who are ex officio members of the Convocation of Canterbury⁷, clergymen qualified as electors for university electoral areas, or members of religious communities⁸. No person, however, is entitled to vote in more than one electoral area⁹.

The persons eligible as proctors for an electoral area consisting of a diocese or part of a diocese are clergymen who have been admitted to priest's orders and who are entitled to vote in that area; they also include archdeacons who hold office in the diocese and are not otherwise appointed¹⁰ as members of the Lower House of the Convocation¹¹. No person, however, may offer himself for election in more than one electoral area at the same time¹².

The presiding officer at the election is the registrar of the diocese or a person appointed by him¹³. The method of election is that of proportional representation, and the procedure to be followed is governed by regulations made for that purpose¹⁴.

1 For the purpose of representation in the Houses of convocation no account is to be taken of any alteration of diocesan boundaries made by a pastoral scheme under the Pastoral Measure 1968, s 35 or s 36, until the elections for those Houses next occur after the coming into operation of the relevant provisions of the scheme: s 37.

2 Revised Canons Ecclesiastical, Canon H2 para 2. This canon was added by Canon promulgated 7th October 1969. The election of proctors must be conducted in accordance with the Rules made under Canon H2: Canon H2 para 6.

3 See PARA 444 ante, and Revised Canons Ecclesiastical, Canon H2 para 2 proviso (a). The number limited by this provision is 130 (Canterbury) and sixty-one (York).

4 Ibid Canon H2 para 2 proviso (a).

5 Ibid Canon H2 para 2 proviso (b) (substituted by Amending Canon No. 2).

6 See ibid Canon H2 para 1 (a) (Canterbury), and PARA 444 text to note 6 ante.

7 See ibid Canon H2 para 1 (d) (Canterbury), and PARA 444 text to note 9 ante.

8 Ibid Canon H2 para 4 (a) (amended by Amending Canon No. 2). Electors must be qualified as such at 6 a.m. on the date of the dissolution of the convocation: Rules made under Canon H2. rr 11 (Canterbury), 9 (York).

9 Revised Canons Ecclesiastical, Canon H2 para 4 proviso.

10 le under ibid Canon H2 para 1 (c) (Canterbury): see PARA 444 ante.

11 Ibid Canon H2 para 5.

12 Ibid Canon H2 para 5 proviso.

13 Rules made under Canon H2, rr 13 (Canterbury), 11 (York). The presiding officer's expenses are paid by the diocesan board of finance: rr 37 (Canterbury), 35 (York).

14 Ibid rr 16 (Canterbury), 14 (York). The regulations were made for Canterbury by Act of Convocation (April 1959), and for York by order of the archbishop (1959).

UPDATE

446 Election of proctors for dioceses

NOTE 1--Repealed: Pastoral (Amendment) Measure 1982 s 27.

NOTE 3--The number limited for Canterbury is now 132: Canon H2 para 2 proviso (a); Diocese in Europe Measure 1980 s 1, Sch 1 para 3; Amending Canon No 8.

TEXT AND NOTE 4--Also except the diocese in Europe (see PARAS 316, 455), which has two proctors: Canon H2 para 2 proviso (a); Diocese in Europe Measure 1980 s 1, Sch 1 para 3; Amending Canon No 8.

TEXT AND NOTE 8--In the application of Canon H2 para 4 to an electoral area consisting of the diocese in Europe (see PARAS 316, 455), the word 'archdeacons' in PARA 4(a) is omitted: Canon H2 para 4; Diocese in Europe Measure 1980 s 1, Sch 1 para 4; Amending Canon No 8.

TEXT AND NOTES 11, 12--This provision is now subject to Canon H2 paras 5A, 5C, under which clergy entitled to vote in a university constituency may stand for election in the diocesan constituency if they have certain qualifications: Amending Canon No 7. The former Canon H2 para 5 proviso becomes H2 para 5B: Amending Canon No 7.

TEXT AND NOTE 11--In the application of Canon H2 para 5 to an electoral area consisting of the diocese in Europe (see PARAS 316, 455), the words 'they also include archdeacons ... Convocation' are omitted: Canon H2 para 5; Diocese in Europe Measure 1980 s 1, Sch 1 para 5; Amending Canon No 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/447. Election of proctors for universities.

447. Election of proctors for universities.

In the province of Canterbury each of the universities of Oxford, Cambridge and London is a separate electoral area; the other universities in the province, acting together for this purpose, form a fourth electoral area¹. In the province of York the universities are divided into two groups, in each of which they act together for the purpose of forming an electoral area. These groups are (1) the universities of Durham and Newcastle, and (2) the other universities in the province². One proctor is to be elected for each of the university electoral areas³.

The electors are clergymen of the Church of England who are qualified by virtue of the positions which they hold in their respective universities, as to which varying requirements are prescribed by rules⁴. No person is entitled to vote in more than one electoral area⁵.

The persons eligible as proctors for a university electoral area are clergymen who have been admitted to priest's orders and who are entitled to vote in that electoral area⁶. No person is entitled to offer himself for election in more than one electoral area at the same time⁷.

Except in cases where the presiding officer acts *ex officio*⁸, the archbishop of the province must appoint one of the electors to be presiding officer⁹. If a poll is necessary the presiding officer must give notice and conduct it in the manner customary for academic elections in the university or one of the universities concerned¹⁰.

1 Revised Canons Ecclesiastical, Canon H2 para 3 (Canterbury). This canon was added by Canon promulgated 7th October 1969. The election of proctors must be conducted in accordance with the Rules made under Canon H2: Canon H2 para 6.

2 Ibid Canon H2 para 3 (York).

3 Ibid Canon H2 para 3 (Canterbury, York).

4 Ibid Canon H2 para 4 (b). The requirements are set out in the Rules made under Canon H2, rr 20 (Canterbury), 18 (York). In the Universities of Oxford and Cambridge the qualification is membership of Congregation and of the Regent House respectively (r. 20 (a), (b) (Canterbury)). In the other universities the following persons are qualified: (1) persons who are certified by the appropriate university officer to be appointed or recognised teachers of the university holding full-time posts or part-time posts declared by the holders to be their main employment (rr. 20 (c) (i), (d) (i) (Canterbury), 18 (a) (York)); (2) persons who are similarly certified to be members of the financial and administrative staffs employed full-time by the university or (in the case of the University of London) by one of its schools or (in the case of other universities) by an institution constitutionally associated with the university (rr. 20 (c) (ii), (d) (ii) (Canterbury), 18 (b) (York)); and (3) except in the University of London persons who are similarly certified to be teachers (other than appointed or recognised teachers) employed full-time by the university or an institution constitutionally associated with it (rr. 20 (d) (ii) (Canterbury), 18 (b) (York)). In every case the qualifying membership, post or employment must be held at 6 a.m. on the date of the dissolution of convocation (rr. 20 (Canterbury), 18 (York)).

5 Revised Canons Ecclesiastical, Canon H2 para 4 proviso.

6 Ibid Canon H2 para 5.

7 Ibid Canon H2 para 5 proviso.

8 Presiding officers *ex officio* are, in the universities of Oxford and Cambridge, the Regius Professor of Divinity (Rules made under Canon H2, r 21 (1) (a) (Canterbury)); in the University of London, the Dean of King's College (r. 21 (a), (b) (Canterbury)); in the electoral area of the Universities of Durham and Newcastle, the Van Mildert Professor of Divinity in the University of Durham (r. 19 (1) (York)). However, if the professor (or in the case of London, the dean) is a candidate or is unable or unwilling to act, the archbishop must appoint one of the electors to take his place: rr 21 (1) proviso (Canterbury), 19 (1) proviso (York).

9 Ibid rr 21 (2) (Canterbury), 19 (2) (York). The presiding officer's expenses must be paid out of the General Synod Fund: rr 37 (Canterbury), 35 (York).

10 Ibid rr 24 (Canterbury), 22 (York).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/448. Vacancies.

448. Vacancies.

A proctor is normally deemed to have vacated his seat if he ceases to be eligible for the electoral area for which he was elected¹; but this will not apply if, in the case of a proctor elected for a diocese or part of a diocese, the bishop's council and standing committee of the diocese has determined that he should remain a member of the Lower House². A person who, having been chosen as a representative of religious communities, ceases to be a member of a religious community in the province is deemed to have vacated his seat in the Lower House³. Any other member of the Lower House is deemed to have vacated his seat if he vacates the office by virtue of which he was eligible for or entitled to his membership⁴.

Subject to necessary modifications an election, appointment or choice of a person to fill a casual vacancy will be conducted in the same manner as an ordinary election, appointment or choice⁵, but where the casual vacancy occurs less than twelve months before an ordinary election to the Lower House is to be held, the vacancy is not to be filled unless the bishop so directs⁶.

1 Revised Canons Ecclesiastical, Canon H2 paras 7, 8 (c). This canon was added by Canon promulgated 7th October 1969. See however para 446 note 1 ante.

2 Revised Canons Ecclesiastical, Canon H2 para 7. As to the election of proctors, see PARAS 446, 447 ante.

3 Ibid Canon H2 para 8 (b). As to the representation of religious communities, see PARA 444 ante.

4 Ibid Canon H2 para 8 (a).

5 Ibid Canon H2 para 9; Rules made under Canon H2, rr 34 (Canterbury), 32 (York).

6 Revised Canons Ecclesiastical, Canon H2 para 9 proviso (amended by Amending Canon No. 2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/449. Irregularities.

449. Irregularities.

The presiding officer of an election¹ is empowered to deal with cases in which a nomination appears to him to be irregular², or in which objection is made to the manner in which an election is held³.

1 As to presiding officers, see PARA 444 notes 6, 13 ante, 446, 447 ante.

2 Rules made under Canon H2, rr 35 (Canterbury), 33 (York). If the irregularity appears before the voting papers are despatched to the electors, the candidate must be informed and given seven clear days in which to provide a fresh nomination, failing which he will be excluded from the election: rr 35 (1) (Canterbury), 33 (1) (York). If the irregularity appears later but before the date of the count, the presiding officer must declare the proceedings void and cause a fresh election to be held: rr 35 (2) (Canterbury); 33 (2) (York).

3 Ibid rr 36 (Canterbury), 34 (York). An objector who remains unsatisfied may (1) in the case of a diocesan election, refer the matter to the diocesan bishop or, if the see is vacant, to the archbishop; or (2), in the case of any other election, refer the matter to the archbishop; and where a matter is referred to the bishop he or any person not satisfied with his decision may refer the matter to the archbishop, whose decision is final: rr 36 (Canterbury), 34 (York).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/450. Rules.

450. Rules.

The power to make rules under the canon relating to the representation of the clergy in the Lower Houses of the convocations¹ must be exercised in accordance with Standing Orders of the General Synod².

¹ See under Revised Canons Ecclesiastical, Canon H2 (added by Canon promulgated 7th October 1969): see Rules made under Canon H2.

² Revised Canons Ecclesiastical, Canon H2 para 10.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/451. Meetings and proceedings of convocations.

451. Meetings and proceedings of convocations.

The archbishop has the right of presiding in the convocation of the province, either in person or by such deputy as he may lawfully appoint¹. In the province of Canterbury the Bishop of London, or in his absence the Bishop of Winchester, has the right to be so appointed; and in their absence the archbishop must appoint some other diocesan bishop of the province¹.

By ancient custom, no Act is held to be an Act of convocation unless it has received the archbishop's assent².

The president of the Upper and also of the Lower House is called prolocutor (speaker)³. The prolocutor of the Lower House is chosen by that House, and presented to the Upper House: like the Speaker of the House of Commons he is the intermediary between the two Houses³.

A convocation may meet within the province or elsewhere at such places and times as they may determine⁴.

A convocation, when assembled, is bound by the surviving provisions of the Submission of the Clergy Act 1533⁵, and is also regulated by a number of ancient and modern rules as to its own procedure⁶.

If the Crown desires the advice of the convocations on matters ecclesiastical, Royal Letters of Business may be issued, stating the matter or matters to be considered, and authorising the convocation to debate, consider, consult and agree upon it, and after mature debate, to present to the Crown a report in writing⁷.

1 Revised Canons Ecclesiastical, Canon C17 para 4.

2 Ibid Canon C17 para 5 (amended by Amending Canon No. 1). An Act of Convocation is a resolution passed by both Houses of the convocation and ratified and promulgated by the president in full synod: see Acts of the Convocations of Canterbury and York (1961 Edn), Editors' Note. Whilst it has moral force it has no legal force: Chronicle of Convocation (1959) 159 et seq; *Bland v Archdeacon of Cheltenham* (1972) Fam 157 at 166; [1972] 1 All ER 1012 at 1018.

3 See 4 Co Inst 322.

4 Revised Canons Ecclesiastical, Canon H1 para 2. This canon is set out in the Synodical Government Measure 1969, Sch. 1, and was added by Canon promulgated 7th October 1969.

5 The Submission of the Clergy Act 1533 has been repealed with the exception of ss 1, 3. The effect of these sections has been greatly diminished, as far as the convocations are concerned, by the transfer to the General synod of the powers to make canons; see the Synodical Government Measure 1969, s 1 (3); Revised Canons Ecclesiastical, Canon H1 paras 1, 2, and PARA 452 post.

6 It also has a terminology in some cases peculiar to itself, but apparently chiefly founded on that of Parliament. Thus the speaker is prolocutor, an adjournment a continuation: see also Bishop Kennett, Ecclesiastical Synods 168. Convocation also has a special prayer which is never to be omitted and which contains the following passage: 'We who according to the Order of our Holy Reformation have deliberately and with good reason renounced the errors, corruptions, and superstitions, as well as the Papal tyranny which once prevailed': see Forma Precum (British Museum, 3406, c. 31).

7 For the forms, see Cardwell, History of Conferences 443; Chronicle of Convocation, Lower House, Canterbury 1872, p. 240; and Joyce, History of Convocations 142. Taxation of the clergy once formed a principal part of the business of convocation, but the clergy now has no special constitutional privilege in this respect: see PARA 351 ante. For a consideration of some aspects of the early constitution of convocation as a body, see *R v Archbishop of York* (1888) 20 QBD 740 at 746, 747, per Lord Coleridge CJ. Letters of Business were granted in

1872 for the discussion of the Ritual Commissioners' Final Report, and in 1904 for the consideration of the Prayer Book which resulted in the abortive Revised Prayer Book Measure. Recourse to this procedure in the future seems unlikely.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/452. General functions of convocations.

452. General functions of convocations.

The introduction of synodical government in 1970 had the effect of vesting in the General Synod the functions, authority, rights and privileges of the convocations, and of modifying the functions of the convocations when sitting separately¹ for their provinces². Each convocation may continue to meet separately for the purpose of considering matters concerning the Church of England and making provision by appropriate instruments for such matters in relation to its province or referring such matters to the General Synod³. It is, moreover, obligatory for the convocations to meet for the purpose of discharging certain specified functions⁴. The convocations retain the right (exercisable also by the General Synod) to present addresses to her Majesty, and the Lower House of a convocation retains the right to present gravamina⁵ to the Upper House⁶.

1 'Separately', in this context, appears to mean in separation from the General Synod, of which they are constituent parts.

2 Synodical Government Measure 1969, s 1 (1); Revised Canons Ecclesiastical, Canon H1 para 1. This Canon is set out in the Synodical Government Measure 1969, Sch. 1, and was added by Canon promulgated 7th October 1969. See also PARA 385 ante.

3 Revised Canons Ecclesiastical, Canon H1 para 2. The power to make such provision is not exercisable by canon, and, without prejudice to the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 7 (the constitution of the General Synod) (see PARA 453 note 3 post), it is to be exercised consistently with the exercise of functions by the General Synod and, in the event of any inconsistency, the provision made by the General Synod will prevail: Revised Canons Ecclesiastical, Canon H1 para 2 proviso.

4 Ibid Canon H1 para 2. As to the functions in question, see the Synodical Government Measure 1969, s 3, Sch. 2, art. 7, and PARA 453 post.

5 I.e. grievances.

6 Revised Canons Ecclesiastical, Canon H1 para 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(6) THE PROVINCES/(iii) Convocations/453. Particular functions of convocations.

453. Particular functions of convocations.

Certain specific functions are, under various enactments, exercisable by the convocations. The powers exercisable by the convocations and their Houses under the Ecclesiastical Jurisdiction Measure 1963 continue to be exercisable by them for their respective provinces¹. Before final approval by the General Synod of any provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the sacraments or sacred rites, the convocations are entitled to have those provisions referred to them for their approval². In addition, the convocations are required to meet to consider any other matter referred to them by the General Synod³.

1 Synodical Government Measure 1969, s 3 (6); Revised Canons Ecclesiastical, Canon H1 para 2. This canon is set out in the Synodical Government Measure 1969, Sch. 1, and was added by Canon promulgated 7th October 1969. See PARA 1291 post.

2 Ibid s 2 (1), Sch. 2, art. 7; Revised Canons Ecclesiastical, Canon H1 para 2. See PARA 403 ante.

3 Ibid Canon H1 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(i) Territorial Organisation/454. The diocese.

(7) DIOCESES

(i) Territorial Organisation

454. The diocese.

A diocese is a legal division of a province and the circuit of a bishop's jurisdiction: it is divided into archdeaconries, each archdeaconry into deaneries¹, and each deanery into parishes².

At one time or another the boundaries of the dioceses have undergone many alterations, involving for example such changes as the suppression or union of old dioceses, the creation of new ones and the transfer of districts between dioceses. A number of such changes were made in the reign of Henry VIII, and there have been many others in modern times³. The foundation of new sees was formerly effected by special Acts of Parliament, but can now be dealt with by Measures passed by the General Synod of the Church of England, assented to by Parliament³. Alteration of diocesan boundaries can be effected by a special procedure under the Pastoral Measure 1968⁴. When portions of a diocese are transferred, jurisdiction over them goes to the bishop and ecclesiastical courts of the diocese to which they are transferred⁵.

Certain portions of dioceses, called peculiars, are, except for certain purposes, exempt from the bishop's jurisdiction⁶, and some places, for example the Temple Church, are extra-diocesan.

1 Rural deaneries are now usually called simply 'deaneries', in accordance with the nomenclature of the Synodical Government Measure 1969: see s 9 (2).

2 Co Litt 94a; Ecclesiastical Commissioners Act 1836, preamble.

3 See PARAS 455, 456 post.

4 See PARA 457 post.

5 Ecclesiastical Jurisdiction Act 1847, s 1 (jurisdiction of bishop), made permanent by the Expiring Laws Act 1922, s 1, Schedule. As to the procedure for such transfers, see the Pastoral Measure 1968, ss 11, 12, 35, 36, and PARAS 457, 861, 866 post. See also the New Dioceses (Transitional Provisions) Measure 1927 (referred to in PARA 427 ante, 504 post).

6 As to peculiars, see PARA 492 post.

UPDATE

454 The diocese

NOTE 2--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

NOTE 5--Pastoral Measure 1968 consolidated in Pastoral Measure 1983; see ss 12, 13, 35, 36. New Dioceses (Transitional Provisions) Measure 1927 repealed: Dioceses Measure 1978 s 9. Ecclesiastical Jurisdiction Act 1847 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(i) Territorial Organisation/455. Dioceses in the province of Canterbury.

455. Dioceses in the province of Canterbury.

The province of Canterbury now comprises twenty-nine dioceses, namely fourteen dioceses founded before the reign of Henry VIII, which are Canterbury, London, Winchester, Bath and Wells, Chichester, Ely, Exeter, Hereford, Lichfield, Lincoln, Norwich, Rochester, Salisbury and Worcester; four dioceses founded in the reign of Henry VIII¹, Gloucester, Bristol², Peterborough and Oxford; and eleven dioceses founded in modern times by Orders in Council made under the authority of an Act or Measure, St Albans³, Truro⁴, Southwark⁵, Birmingham⁵, Chelmsford⁶, St Edmundsbury and Ipswich⁶, Coventry⁷, Derby⁸, Guildford⁹, Portsmouth⁹ and Leicester¹⁰.

1 Co Litt 94a.

2 Gloucester and Bristol were united under the Ecclesiastical Commissioners Act 1836, preamble, but were disunited by the Bishopric of Bristol Act 1884; Bishopric of Bristol Amendment Acts 1894 and 1896.

3 Bishopric of St Albans Act 1875; Bishopric of St Albans Order in Council dated 30th April 1877.

4 Bishopric of Truro Act 1876; Bishopric of Truro Order in Council dated 9th December 1876.

5 Bishoprics of Southwark and Birmingham Act 1904; Bishopric of Southwark Order in Council 1905, S.R. & O. 1905 No. 321; Bishopric of Birmingham Order in Council 1905, S.R. & O. 1905 No. 7.

6 Bishoprics of Sheffield, Chelmsford, and for the County of Suffolk Act 1913; Bishopric of Chelmsford Order in Council 1914, S.R. & O. 1914 No. 145; Bishopric of St Edmundsbury and Ipswich Order in Council 1914, S.R. & O. No. 146. As to Sheffield, see PARA 456 post.

7 Bishoprics of Bradford and Coventry Act 1918; Bishopric of Coventry Order in Council 1918, S.R. & O. 1918 No. 1172. As to Bradford, see PARA 456 post.

8 Diocese of Southwell (Division) Measure 1923; Bishopric of Derby Order in Council 1927, S.R. & O. 1927 No. 624.

9 Diocese of Winchester (Division) Measure 1923; Bishopric of Guildford Order in Council 1927, S.R. & O. 1927 No. 357; Bishopric of Portsmouth Order in Council 1927, S.R. & O. 1927 No. 358; see also the Farnham Castle Measure 1935; Guildford Cathedral Measure 1938 (repealed); Guildford Cathedral Measure 1959.

10 Bishopric of Leicester Measure 1925; Bishopric of Leicester Order in Council 1926, S.R. & O. 1926 No. 1411.

UPDATE

455 Dioceses in the province of Canterbury

TEXT AND NOTES--The diocese in Europe, comprising the former diocese of Gibraltar and the areas of northern and central Europe formerly under the jurisdiction of the Bishop of London, see PARA 316, is also a diocese in the province of Canterbury: Diocese in Europe Measure 1980.

NOTE 2--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(i) Territorial Organisation/456. Dioceses in the province of York.

456. Dioceses in the province of York.

The province of York comprises fourteen dioceses, four of earlier date than Henry VIII's reign, namely, York, Durham, Carlisle and Sodor and Man¹; one founded in that reign, Chester¹; and nine sees founded in modern times, Ripon², Manchester², Liverpool³, Newcastle³, Southwell³, Wakefield³, Sheffield⁴, Bradford⁵ and Blackburn⁶.

1 Co Litt 94a.

2 Ecclesiastical Commissioners Act 1836, preamble; Orders in Council dated 5th October 1836 (Ripon) and 10th August 1847 (Manchester), published in the London Gazette dated 7th October 1836 and 31st August 1847, respectively.

3 Bishoprics Act 1878; Bishopric of Liverpool Order in Council dated 24th March 1880; Bishopric of Newcastle Order in Council dated 17th May 1882; Bishopric of Southwell Order in Council dated 2nd February 1884; Bishopric of Wakefield Order in Council dated 17th May 1888. Southwell was formerly in the province of Canterbury but became part of the province of York in 1935: Diocese of Southwell (Transfer) Measure 1935.

4 Bishoprics of Sheffield, Chelmsford, and for the County of Suffolk Act 1913; Bishopric of Sheffield Order in Council 1914, S.R. & O. 1914 No. 147. As to Chelmsford and St Edmundsbury and Ipswich, see PARA 455 ante.

5 Bishoprics of Bradford and Coventry Act 1918; Bishopric of Bradford Order in Council 1919, S.R. & O. 1919 No. 1889. As to Coventry, see PARA 455 ante.

6 Bishopric of Blackburn Measure 1923; Bishopric of Blackburn Order in Council 1926, S.R. & O. 1926 No. 1410.

UPDATE

456 Dioceses in the province of York

NOTE 2--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(i) Territorial Organisation/457. Alteration of diocesan boundaries.

457. Alteration of diocesan boundaries.

The bishops of two or more dioceses may, by an instrument sealed by each of them, provide for constituting a committee, to be known as the joint pastoral committee, for the purpose of considering the boundaries of those dioceses and the pastoral arrangements in the adjacent areas¹. Any recommendations and draft proposals of the committee are to be submitted to the bishops of the dioceses concerned, who may approve them, with or without amendments, and submit them to the Church Commissioners with a view to the preparation of a pastoral scheme for submission to Her Majesty in Council for confirmation². Any such pastoral scheme may provide for altering the boundaries between any of the dioceses represented by the joint pastoral committee and for transferring any benefices, parishes or extraparochial places affected by the alteration from one diocese to another, but not so as to create or dissolve any diocese³. Both the functions of the committee and the powers exercisable in pursuance of its proposals will be subject to any limitations imposed by an instrument sealed by the bishops of the dioceses concerned⁴.

1 Pastoral Measure 1968, s 12 (1), (2). The committee must comprise an equal number of members (not exceeding five) from each diocese and a chairman appointed by the bishops jointly or, in default of their agreement, by the Church Commissioners; the members from any diocese must include the bishop, if he so desires, and must otherwise be nominated by the pastoral committee of the diocese from among its members: s 12 (2). The committee's procedure is to follow that prescribed for the pastoral committee of a diocese, with some modification: see s 12 (4), Sch. 1 paras 7-11: see PARA 521 post. Provision is made for the dissolution of the joint pastoral committee by instrument sealed by the bishops of the dioceses concerned: s 12 (6).

2 Ibid s 12 (5). The procedure will be similar to that prescribed in the case of proposals submitted by the pastoral committee of a diocese (see ss 3-9) with certain modifications (s. 12 (5)): see PARA 521 post.

3 Ibid s 36 (a). The scheme may also include provision, applicable to specified areas of the dioceses directly or indirectly affected by the alteration of boundaries, in regard to any of the matters for which provision could be made by a pastoral scheme applying to an area to one diocese, with such modifications as may be necessary or expedient: see s 36 (b).

4 Ibid ss 12 (3), 36 proviso. Any such limitations may, before the scheme is made by the commissioners, be revoked or varied by a subsequent instrument so sealed: ss 12 (3), 36 proviso.

UPDATE

457 Alteration of diocesan boundaries

NOTES--1968 Measure, as amended, consolidated in Pastoral Measure 1983; see s 13 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 3), which provides that joint pastoral committees are to be renamed joint boundary committee.

TEXT AND NOTE 1--The consent of the Dioceses Commission is required before this can be done: 1983 Measure s 13(1).

NOTE 1--The committee must also include a member of the Dioceses Commission nominated by that Commission: *ibid* s 13(2). 1968 Measure Sch 1 paras 7-11 now 1983 Measure Sch 1 paras 7-12.

NOTE 2--1968 Measure ss 3-9 now 1983 Measure ss 3-10.

NOTE 3--Now *ibid* s 36.

NOTE 4--1968 Measure s 36 proviso now 1983 Measure s 36 proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(i) Territorial Organisation/457A. Dioceses Commission.

457A. Dioceses Commission.

Provision is made by the Dioceses, Pastoral and Mission Measure 2007 Pt II (ss 2-22) for the establishment of the Dioceses Commission (see s 2(1), Sch 1). In particular, Pt II provides for (1) the duty of the Commission to keep under review the provincial and diocesan structure of the Church of England (s 3); (2) the duty of the Commission to prepare and make reorganisation schemes (s 4, Sch 2); (3) the power of the bishop of a diocese to submit to the Commission proposals to be implemented by a reorganisation scheme relating to that diocese (s 5); (4) the preparation of draft schemes by the Commission (s 6); (5) approval of schemes by the diocesan synod (s 7); (6) confirmation and publication of schemes (s 8); (7) the commencement, variation and revocation of schemes (s 9); (8) the power of the General Synod to make temporary provision with respect to the membership of Convocations (s 10); (9) requests by bishops for the name of any diocesan or suffragan see to be changed (s 11); (10) the duty of a bishop of a diocese to keep under review the provision of episcopal ministry and oversight in his diocese (s 12 (not yet in force)); (11) the delegation by instrument of certain functions to a suffragan bishop or assistant bishop (s 13); (12) the discharge of certain functions of a bishop (s 14); (13) rights of collation (s 15); (14) the conferral of functions on diocesan bishops relating to reorganisation schemes (s 16); (15) the filling of vacancies in suffragan sees (s 17 (not yet in force)); (16) the creation of suffragan sees (s 18); (17) schemes with respect to the discharge of functions of diocesan bodies corporate (s 19); and (18) the power of the Commission with regard to the payment of the stipend and expenses of certain bishops where a new bishopric is founded and a new diocese created by a reorganisation scheme (s 21). As to the power of bishops to make an order authorising a group of persons to carry out a 'mission initiative' that would be likely, through fostering or developing a form of Christian community, to promote or further the mission of the Church or any aspect of it, see ss 47-51.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/A. STATUS AND QUALIFICATIONS/458. Status of diocesan bishop.

(ii) Diocesan Bishops

A. STATUS AND QUALIFICATIONS

458. Status of diocesan bishop.

The bishop of a diocese is a legally ordained minister appointed by the Crown, who, under the supremacy of the Crown and the supervision of the archbishop, is 'chief in superintendency'¹ in matters ecclesiastical within the diocese². He is also called 'Ordinary' in some enactments 'as having ordinary jurisdiction in causes ecclesiastical'³, 'immediate to the King'⁴.

The bishop is a corporation sole, with perpetual succession and a seal⁵. He may use a seal other than that of his office for letters of institution, as the seal is not material⁶.

1 Godolphin's Repertorium Canonicum 23. See also the Revised Canons Ecclesiastical, Canon C18, and PARA 472 post. As to suffragan bishops, see PARA 493 et seq post.

2 For the meaning of 'bishop', see PARA 430 note 4 ante.

3 Godolphin's Repertorium Canonicum 23. In the civil law, from which the word is taken, 'ordinarius' signifies any judge authorised to take cognisance of causes proprio suo jure, and not by way of deputation or delegation. Lyndwood refers to 'Ordinaries of the place' as having limited jurisdiction, under the bishop, by law, privilege or custom: see Lyndwood 16, gloss on 'Ordinarii'.

4 Godolphin's Repertorium Canonicum 32. See also PARA 472 post.

5 As to the seal, see PARA 435 note 6 ante. See generally CORPORATIONS vol 9(2) (2006 Reissue) PARA 1112.

6 *Cort v Bishop of St David's* (1634) Cro Car 341.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/A. STATUS AND QUALIFICATIONS/459. Qualifications.

459. Qualifications.

No man can be a bishop unless he is at least thirty years of age¹, and duly appointed and consecrated according to the statutory rules². He cannot be refused consecration on the ground that he was born out of lawful wedlock³. He must be a godly and well-learned man, and has to be vouched for as such by two bishops⁴. He must be persuaded that he is truly called to this ministration according to the will of our Lord Jesus Christ and the order of this realm; and that the holy scriptures contain sufficiently all doctrine required of necessity for eternal salvation through faith in Jesus Christ; and he must be ready to drive away all erroneous and strange doctrine contrary to God's Word⁵.

1 Book of Common Prayer, Preface to Form of Making, Ordaining and Consecrating Bishops, Priests and Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 3 (repealed); Revised Canons Ecclesiastical, Canon C2 para 3. By the Roman canon law this rule applied to all presbyters (except in emergencies), thirty being the age at which our Lord was baptised and began to preach: Dist. 78, c. 3; see PARA 305 note 3 ante.

2 See PARA 460 et seq post.

3 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 8; Revised Canons Ecclesiastical, Canon C2 para 4. See also PARA 658 notes 4, 5 post.

4 Book of Common Prayer, Form of Ordaining or Consecrating of an Archbishop or Bishop: 'Most reverend Father in God, we' (ie two bishops) 'present unto you this godly and well-learned man to be ordained and consecrated Bishop'.

5 Book of Common Prayer, Form of Ordaining or Consecrating of an Archbishop or Bishop (where further requirements are set out).

UPDATE

459 Qualifications

TEXT AND NOTE 1--A man of 70 or over may not be appointed: Ecclesiastical Offices (Age Limit) Measure 1975 s 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/460. Appointment of bishops by the Crown.

B. APPOINTMENT OF BISHOPS

460. Appointment of bishops by the Crown.

The Kings of England were reputedly the founders of all the bishoprics in England¹. Hence all bishops in England are, in all cases, appointed by the Crown. The Crown appoints diocesan bishops in two ways, either by royal letters missive and *cong  d' lire*² or, exceptionally, by royal letters patent³.

1 Co Litt 94a, 97; 1 Co Inst 134, 344.

2 For the procedure, see PARA 461 post.

3 Except in the case of the diocese of Sodor and Man (see PARA 462 note 2 post), an appointment by letters patent can only be made where the dean and chapter or cathedral chapter constituted for the cathedral church of a diocese by a scheme made under the Cathedrals Measure 1931 or the Cathedrals Measure 1963 has failed to elect within the stipulated time after receipt of the *cong  d' lire* and letter missive: see PARA 462 post. Formerly, in the case of the dioceses of St Albans, Truro, Liverpool, Newcastle, Southwell, Wakefield, Southwark, Birmingham, Sheffield, Chelmsford, St Edmundsbury and Ipswich, Bradford and Coventry, the various Acts under which the bishoprics were founded (see PARAS 455, 456 ante) provided that until the foundation of a dean and chapter the appointment of bishops should be by letters patent as if the dean and chapter had been in default in proceeding to election. In the case of the more recent foundations of Blackburn, Derby, Portsmouth, Guildford and Leicester provisional chapters were founded which were to act in the same way as a dean and chapter until a regular dean and chapter should be founded. All the foregoing provisions ceased to have effect after a scheme under the Cathedrals Measure 1931 had established or otherwise made provision for the constitution of a cathedral chapter in the cathedral church of the bishopric (s. 23 (1)) and upon an avoidance of such bishopric a licence under the Great Seal is granted to such cathedral chapter with a letter missive as provided by the Appointment of Bishops Act 1533, s 3, and the cathedral chapter possesses the right to proceed to an election as laid down by that Act: Cathedrals Measure 1931, s 23 (2). Schemes were made for all the dioceses mentioned in this note, providing for the setting up of a body as the cathedral chapter of each cathedral church and for the receipt by that chapter of the licence and letter missive on a vacancy in the bishopric. As to cathedral schemes, see PARA 612 et seq post. See also PARA 461 post.

UPDATE

460 Appointment of bishops by the Crown

The Vacancy in See Committees Regulation 1977, proclaimed as an Act of Synod on 15 February 1977, provides for the establishment for every diocese of a Vacancy in See Committee, comprising ex officio and elected members: s 1. The committee's function is to prepare a statement of the needs of the diocese for the information of the Crown Appointments Commission of the General Synod (which advises the Prime Minister as to the appointment of a new bishop), and to elect four of the members of the committee to be members of the commission in connection with the commission's functions in relation to the vacancy of the diocesan bishopric; the committee may also suggest names to the commission: s 4. The Prime Minister's Secretary for Appointments and the Archbishops' Secretary for Appointments must be invited to attend committee meetings: s 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/461. Election of bishop by dean and chapter or cathedral chapter.

461. Election of bishop by dean and chapter or cathedral chapter.

Upon the avoidance of a bishopric¹ the Crown grants to the dean and chapter or cathedral chapter² of the cathedral of the void see a licence under the Great Seal (termed a congé d'élire) to proceed to the election of a bishop, with a letter missive containing the name of the person to be elected³.

The person nominated must be elected and chosen by the dean and chapter or cathedral chapter to the void bishopric within twelve days after the delivery to them or it of the licence and letter missive and, after certification made under their or its common seal to the Crown, the person elected is to be reputed and taken by the name of lord elect of the bishopric⁴.

1 In ordinary cases avoidance takes place by resignation, death or translation. As to resignation and voluntary or compulsory retirement, see PARA 485 et seq post, as to the power of deprivation, see PARAS 1373, 1374 post; and as to translation, see PARA 471 post. An ordinary vacancy ought to be certified to the Crown in Chancery by the dean and chapter, who pray leave of the Queen to make election: Godolphin's Repertorium Canonum 29; *Evans and Kiffins v Askwith* (1672) W Jo 158 at 160. For a form, see *R v Archbishop of Canterbury* (1848) Jebb's Report 1 at 3. The practice is, however, sometimes omitted: *R v Archbishop of Canterbury* supra at 2; *R v Archbishop of Canterbury* [1902] 2 K B 503 at 518.

2 To the dean and chapter in the case of a dean and chapter cathedral or to the cathedral chapter in the case of a parish church cathedral: see PARAS 618, 619 post. See also PARA 460 note 3 ante.

3 Appointment of Bishops Act 1533, s 3; Cathedrals Measure 1931, s 3. As to whether this is compulsory, or whether bishoprics may be donative simply, see *R v Archbishop of Canterbury* (1848) Jebb's Report 1. For forms of congé d'élire and letters missive, see *R v Archbishop of Canterbury* supra at 2-4. The letters missive are given under the signet (*R v Archbishop of Canterbury* supra at 4). Notice of the congé d'élire passing the Great Seal is published in the London Gazette: see eg the London Gazette, 15th June 1956, p. 350.

4 Appointment of Bishops Act 1533, ss 3, 4

In the case of an election by a dean and chapter the ceremonies would appear to be (1) a citatory letter under the chapter seal convening a general chapter; (2) meeting of the general chapter, and the delivery to the dean and reading of the congé d'élire and letters missive by the chapter clerk; (3) return of the citation by mandatory, calling over of the names, and assumption of directorship of the election by the dean, and pronouncement of absent members of the chapter as contumacious; (4) pronouncement of members lawfully present a full chapter; (5) appointment of a notary (usually the chapter clerk) and two witnesses; (6) taking of votes, beginning with the junior member; (7) on election, which is usually unanimous (whether a majority is sufficient seems doubtful: see *R v Archbishop of Canterbury* (1848) Jebb's Report 1 at 11, 12), decree of three certificates under the chapter seal (one to the Crown, one to the archbishop of the diocese, and one to the bishop elect) praying acceptance; (8) decree of a proxy to three notaries public to deliver the certificates; (9) publication and declaration of the election to the congregation: see *R v Archbishop of Canterbury* supra at 1-19. For forms, see *R v Archbishop of Canterbury* supra.

In the case of an election by a cathedral chapter the procedure will be similar, with necessary modifications.

The liabilities to the penalties of praemunire, to which (under the Appointment of Bishops Act 1533, s 6 (repealed)) the dean and chapter were formerly exposed if they failed to elect within the stipulated time, have been abolished: Criminal Law Act 1967, s 13, Sch. 4, Part 1.

UPDATE

461 Election of bishop by dean and chapter or cathedral chapter

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), the College of Canons performs the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter: Cathedrals Measure 1999 s 5(3).

NOTE 3--1931 Measure repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/462. Procedure in default of election of bishop.

462. Procedure in default of election of bishop.

If the dean and chapter or cathedral chapter defer the election above twelve days after the delivery to them of the licence and letter missive¹, the Crown may, by letters patent under the Great Seal, nominate and present such person as it thinks able and convenient for the vacant office and dignity². This nomination and presentment must be made to the archbishop of the province where the see is void or, if the archbishopric is void, to such archbishop or metropolitan within the realm or any of the Queen's dominions as the Crown thinks fit³.

1 See PARA 461 ante.

2 Appointment of Bishops Act 1533, s 3. In the diocese of Sodor and Man, where there is no chapter, appointment of the bishop by letters patent is the normal procedure: see Report of the Archbishops' Commission on Church and State (CIO 1970) 30, 90, 91.

3 Appointment of Bishops Act 1533, s 3. In such a case confirmation (see PARA 464 post) is not required, and the person nominated and presented by the Crown is to be invested and consecrated forthwith: s 4.

UPDATE

462 Procedure in default of election of bishop

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), the College of Canons performs the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter: Cathedrals Measure 1999 s 5(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/463. Signification of election of bishop.

463. Signification of election of bishop.

After the election and certification of the new bishop by the dean and chapter or cathedral chapter, and the taking of such oath of fealty as may be appointed¹, the Crown must, by letters patent under the Great Seal, signify the election to the archbishop of the appropriate province, requiring and commanding him to confirm the election and to invest and consecrate the person elected².

1 The Appointment of Bishops Act 1533, s 4, refers to the taking of the oath of fealty at this stage. See, however, s 5, where it is mentioned again in conjunction with suing for the temporalities (as to which see PARAS 468, 488 post). In practice it seems that the oath is taken on the occasion of doing homage (see PARA 469 post), which is usually after consecration.

2 Ibid s 4. If the archbishop's see is void, signification is to be made to any other archbishop within the realm or in any other of the Queen's dominions: s 4. For the form of letters patent, see *R v Archbishop of Canterbury* (1848) Jebb's Report 1 at 23.

UPDATE

463 Signification of election of bishop

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), the College of Canons performs the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter: Cathedrals Measure 1999 s 5(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/464. Confirmation of election of bishop.

464. Confirmation of election of bishop.

After the election of the new bishop has been signified by the Crown to the archbishop, the archbishop subscribes his fiat confirmatio, giving commission, under his seal, to his vicar-general to perform all the acts necessary to perfect the confirmation¹. The vicar-general, in the archbishop's name, issues a citation, summoning all opposers of the election to appear at a certain time and place to offer their objections, if any². At the time and place appointed the proctor for the dean and chapter or cathedral chapter exhibits the royal assent and the archbishop's commission to the vicar-general, who accepts them; the proctor exhibits the proxy from the dean and chapter or cathedral chapter, presents the elected bishop, returns the citation, and desires that the opposers may be thrice publicly called³, which done, and their contumacy accused, he desires that, in poenam contumaciae, the business may proceed, which is ordered in writing by the vicar-general. Then the proctor presents a summary petition, stating the whole process of election and assent, and desires that a time may be assigned him to prove it, which the vicar-general admits and decrees⁴.

After this the proctor again exhibits the royal assent, the elected bishop's assent and the certificate to the archbishop, desiring a time to be assigned for final sentence, which the vicar-general decrees. The proctor again has all opposers thrice publicly called; and, none appearing or opposing, they are pronounced contumacious, and a decree is made to proceed to sentence by a schedule read and subscribed by the vicar-general. The bishop then takes the oaths of allegiance⁵ and of obedience to the archbishop⁶ and makes the declarations of assent⁷ and against simony⁸, whereupon the vicar-general reads and subscribes the sentence⁹.

1 Godolphin's Repertorium Canonicum 25. As to the vicar-general, see PARA 430 note 3 ante.

2 As to what objections can be sustained, see PARA 466 post. The apparitor-general calls the opposers by a process called 'triple preconisation'. In the province of Canterbury this usually takes place at Church House, Westminster.

3 As to what objections can be taken, see *R v Archbishop of Canterbury* [1902] 2 K B 503, and PARA 466 post.

4 Godolphin's Repertorium Canonicum 25.

5 See the Revised Canons Ecclesiastical, Canon C13 para 1. The form of oath prescribed is 'I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law: So help me God'. An archbishop consecrating a person to exercise episcopal functions elsewhere than in England may dispense with the oath of allegiance: Canon C14 para 2.

6 See *ibid* Canon C14 para 1. The oath must be taken in the form and manner prescribed in and by the Ordinal: Canon C14 para 1. According to the ancient law and usage of the Church and realm of England the bishop of each diocese owes due allegiance to the archbishop of the province as his metropolitan: Canon C1 para 3.

7 See *ibid* Canon C15 paras 1 (1), (3), 2 (substituted by Amending Canon No. 4).

8 See *ibid* Canon C16 para 1. This declares that he has not made any payment, contract or promise which is simoniacal touching or concerning his preferment. As to what is simoniacal, see PARAS 832-834, 1359 post.

9 *R v Archbishop of Canterbury, Dr Hampden's Case* (1848), Jebb's Report 1 at 79. Godolphin's Repertorium Canonicum 25, 26, says that the Dean of the Arches subscribes the sentence.

UPDATE

464 Confirmation of election of bishop

TEXT AND NOTE 8--This declaration is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/465. Fitness of bishop elect.

465. Fitness of bishop elect.

There is no mention in the Appointment of Bishops Act 1533 of any examination or inquiry by the archbishop, nor does the Act on the face of it in terms contemplate or suggest directly or indirectly that the archbishop can in any way question the fitness of the person nominated by the Crown, unless such power is involved in the use of the word 'confirm'¹. Hence the archbishop is merely a ministerial agent, and has no general right of questioning the fitness of the Crown's nominee². Further, the archbishop is not compellable by mandamus to consider objections in order to inform his mind as to the fitness of the bishop elect³.

1 *R v Archbishop of Canterbury* [1902] 2 K B 503 at 540, per Lord Alverstone CJ.

2 *R v Archbishop of Canterbury* [1902] 2 K B 503.

3 *R v Archbishop of Canterbury* [1902] 2 K B 503 at 539.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/466. Objections to confirmation of bishop.

466. Objections to confirmation of bishop.

No objection can be taken to a bishop elect, in answer to the triple preconisation in the confirmation ceremony¹, on the ground of heresy or unsoundness of doctrine, and no mandamus will lie to compel the archbishop to hear and determine objections of that nature². Objections are only allowed on two points, namely that the election had been defective in some matter of form, or that the person presented for confirmation is not the person on whom the Crown's choice had fallen. Such objections, if well founded, entitle the archbishop to rectify any informality in the form of the election, under the peculiar power which he has to supply the defects, whatever they may be, in the election³. If any person has any other objection to make, or thinks the Crown's choice erroneous, it is his duty to apply at an earlier stage than confirmation. He should petition Her Majesty not to issue her mandate for the confirmation⁴. The archbishop has jurisdiction to issue a citation requiring objections to be delivered before the confirmation⁵, but it is doubtful whether the strict form and order of the proceedings, which have been in use since 1534, can be departed from⁶.

1 See PARA 464 ante.

2 *R v Archbishop of Canterbury* [1902] 2 KB 503 at 562, per Wright J; *R v Archbishop of Canterbury* (1848) Jebb's Report 1; *Dr Temple's Case* (1869) Times, 9th December; *Bishop Mountague's Case* (1629) 6 State Tr NS 427n (b).

3 *R v Archbishop of Canterbury* [1902] 2 KB 503 at 510, per Cripps KC, Vicar-General.

4 *Dr Temple's Case* (1869) Times, 9th December, per Sir Travers Twiss, Vicar-General.

5 *R v Archbishop of Canterbury* [1902] 2 KB 503.

6 See *Bishop Mountague's Case* (1629) 6 Stat Tr NS 427 at 428, per Sir Henry Martin, Dean of the Arches, who thought not; contra, *Dr Temple's Case* (1869) Times, 9th December, per Sir Travers Twiss, Vicar-General; cf. *R v Archbishop of Canterbury* [1902] 2 KB 503 at 509, per Cripps KC, Vicar-General. The ancient decrees, ordinances and constitutions of the canon law were, however, as stated in 37 Hen. 8 c. 17 (Ecclesiastical Jurisdiction) (1545), s 2 (repealed), utterly abolished, and became frustrate and of no effect by the Submission of the Clergy Act 1533 and new forms of confirmation were drawn up at the Reformation and used and put in practice by the archbishop, and have been continuously used ever since.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/467. Consecration of bishop.

467. Consecration of bishop.

After the confirmation of the elected bishop in obedience to the Crown's mandate he is consecrated by the archbishop with the assistance of two other bishops¹, although consecration is not required if the bishop elect is already in episcopal orders². In the case of refusal or failure on the part of the dean and chapter or cathedral chapter to elect, the archbishop to whom the nomination and presentment³ by the Crown comes must invest and consecrate the person nominated and presented⁴. The consecration must be in the statutory form, otherwise it is apprehended that it is invalid⁵; and it must be performed on some Sunday or holy day, unless for weighty and urgent reasons some other day be appointed⁶.

1 Godolphin's Repertorium Canonicum 26; Revised Canons Ecclesiastical, Canon C2 para 1. The archbishop of the province may appoint a bishop to act on his behalf: Canon C2 para 1.

2 Eg in the case of translation (see PARA 471 post) or where he has been a suffragan bishop.

3 As to these, see PARA 462 ante.

4 Appointment of Bishops Act 1533, s 4. In this case there is no direction for confirmation.

5 Thus, at the beginning of the reign of Elizabeth I there was a doubt whether the statute had been duly complied with in the case of certain bishops of the Reformed Church, so an Act was passed confirming their status: see 8 Eliz. 1 c. 1 (Bishops) (1566); Articles of Religion 36; and see the Ecclesiastical Licences Act 1536, s 3 (repealed). This does not affect the question as to whether persons ordained by non-episcopal forms were valid ministers and could hold livings, only whether persons consecrated or ordained under the statutory ordinals were validly consecrated or ordained.

6 Book of Common Prayer, Form of Ordaining or Consecrating of an Archbishop or Bishop; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 6 (repealed); Revised Canons Ecclesiastical, Canon C2 para 2.

UPDATE

467 Consecration of bishop

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), the College of Canons performs the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter: Cathedrals Measure 1999 s 5(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(ii) Diocesan Bishops/B. APPOINTMENT OF BISHOPS/468. Installation of bishop.

468. Installation of bishop.

Having been elected, confirmed¹ and consecrated, and having sued the temporalities of the see out of the Queen's hands in the customary manner, the new bishop is installed in the bishopric². Pursuant to the archbishop's mandate³ the bishop is introduced into the cathedral church in the presence of a public notary, and is placed in the episcopal seat with the customary formula⁴. After the divine service proper for the occasion the bishop is conducted into the chapter house where he receives the customary acknowledgments of canonical obedience, and the public notary records the whole matter in an instrument, to remain as authority to posterity⁵.

On installation the bishop is entitled to restitution out of the Queen's hands of all the possessions and profits, spiritual and temporal, belonging to the bishopric, and must be obeyed in and may do and execute all such things touching his office as are customary and not contrary to the Crown's prerogative and the laws and customs of the realm⁶.

1 In the case of appointment by letters patent, he is nominated and presented, not confirmed: see PARA 462 ante.

2 Appointment of Bishops Act 1533, s 5. The ceremony of installation is now commonly described as 'enthronement' (cf. para 429 note 5 ante). As to suing for the temporalities, see PARA 488 post.

3 In the province of Canterbury the mandate is issued to the archdeacon of Canterbury or his deputy. There does not appear to be any customary official in the province of York.

4 See Godolphin's Repertorium Canonicum 26. Special forms of service are now drawn up for an installation or enthronement.

5 Godolphin's Repertorium Canonicum 26, 27.

6 Appointment of Bishops Act 1533, s 5.

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469. Homage.

The bishop is introduced into the Queen's presence to do his homage for his temporalities or barony by kneeling down and putting his hands between the hands of the Queen, who sits in her chair of state, and by taking a solemn oath to be true and faithful to Her Majesty, with acknowledgment that he holds his temporalities of her¹.

¹ Godolphin's Repertorium Canonikum 26. Nothing in the Promissory Oaths Act 1868 affects the oath of homage taken by archbishops and bishops in the presence of the Queen: s 14 (3).

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470. Cession.

When a clergyman is made bishop of a diocese in England all his other preferments are vacated, and the right of presentation to them devolves on the Queen, but this rule does not apply to a promotion to an Irish, Scottish, Welsh or overseas bishopric, or to a suffragan bishopric in England¹.

¹ *R v Provost and Fellows of Eton College* (1857) 8 E & B 610. By the canon law this rule as to avoidance applied to promotion to any bishopric of the Roman Church, and (prior to disestablishment) was continued as to Ireland: *Evans v Ascough* (1627) Lat 233; *Commendam Case, Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140 at 157, Ex Ch.

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471. Translation.

Translation is the transfer of a bishop from one see to another. When the appointment is by congé d'élire the former see is not void by the election to the new one until the election is confirmed by the archbishop¹. On a translation there is no consecration².

1 *Evans and Kiffins v Askwith* (1627) WJo 158.

2 Godolphin's Repertorium Canonicum 29.

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C. POWERS, DUTIES AND PRIVILEGES OF BISHOPS

472. Bishop's powers and duties.

The bishop is the chief pastor of all who are within his diocese, both clergy and laity, and their father in God; it appertains to his office to teach and to uphold sound and wholesome doctrine, and to banish and drive away all erroneous and strange opinions; and, himself an example of righteous and godly living, it is his duty to set forward and maintain quietness, love and peace among all men¹.

The bishop has within his diocese jurisdiction as Ordinary², except in places and over persons exempt by law or custom³. This jurisdiction is exercised by the bishop himself, or by a vicar-general, official or other commissary to whom the bishop has committed authority in that behalf⁴. The bishop is enjoined to correct and punish all such as be unquiet, disobedient or criminous within his diocese, according to such authority as he has by God's Word and is committed to him by the laws and ordinances of the realm⁵.

Within his diocese the bishop is the principal minister, and to him belongs the right, save in places and over persons exempt by law or custom, of celebrating the rites of ordination⁶ and confirmation⁷; of conducting, ordering, controlling and authorising all services in churches, chapels, churchyards and consecrated burial grounds⁸; of granting a faculty or licence for alterations, additions, removals or repairs to the walls, fabric, ornaments or furniture of such places⁹; of consecrating new churches, churchyards and burial grounds¹⁰; of instituting to all vacant benefices, whether of his own collation or of the presentation of others¹¹; of admitting by licence to all other vacant ecclesiastical offices¹²; of holding visitations at times limited by law or custom¹³; and of being president and one of the three authorities of the diocesan synod¹⁴. In addition, many statutes and Measures require action or consent on the part of the bishop of the diocese concerned¹⁵. All the diocesan bishops of the provinces of Canterbury and York are Church Commissioners¹⁶.

It is the bishop's duty to consult with the diocesan synod on matters of general concern and importance to the diocese¹⁷.

1 Revised Canons Ecclesiastical, Canon C18 para 1.

2 See PARA 458 ante.

3 Revised Canons Ecclesiastical, Canon C18 para 2. As to places exempt, see PARA 492 post. See also PARA 1309 post.

4 Ibid Canon C18 para 3. As to the exercise of the bishop's jurisdiction by a vicar-general or official principal, see PARA 1275 note 1 post. The bishop's official principal (otherwise known as the chancellor) is the judge of the consistory court of the diocese, and acts as an independent judge; in some dioceses the right is reserved to the bishop to adjudicate in person, but such a reservation is probably effective in relation to faculty proceedings only: see PARA 1278 post.

5 Ibid Canon C18 para 7. See however paras 490, 491 post. The bishop's disciplinary powers are limited, in particular, by the provisions of the Ecclesiastical Jurisdiction Measure 1963: see note 4 supra, and PARA 1350 et seq post. Under that Measure the clergy alone are subject to the criminal jurisdiction of the ecclesiastical courts; and in proceedings against clergymen charged with offences the bishop has certain extra-judicial functions and powers, including a power to pronounce sentence by consent: s 31.

- 6 See PARAS 475, 654 et seq post.
- 7 See PARA 999 et seq post.
- 8 See PARA 481 post. In exercising this right the bishop must observe the requirements of the law relating to public worship.
- 9 This power is exercisable through the faculty jurisdiction of the consistory court, as to which see PARA 1306 et seq post.
- 10 See PARAS 1054, 1068 et seq post. See also CREMATION AND BURIAL vol 10 (Reissue) PARAS 1020, 1022.
- 11 See PARA 842 et seq post.
- 12 As to the licensing and appointment of curates, see PARAS 706 et eq., post. As to the appointment of canons, see PARA 645 post. In the case of a chancellor, the appointment is made by letters patent: see PARA 1275 post.
- 13 See PARA 490 et seq post.
- 14 Revised Canons Ecclesiastical, Canon C18 para 4 (amended by Amending Canon No. 1). See PARA 503 et seq post.
- 15 The bishop's functions under various statutory provisions are referred to in the appropriate places in this title: see eg the Church Representation Rules (see PARA 389 ante), the provisions of the Marriage Act 1949 relating to marriage licences (see PARA 1023 post), and numerous provisions of the Pastoral Measure 1968 (see PARA 856 et seq post). For the relationship of bishops to their cathedral churches, see PARA 617 post.
- 16 See PARA 364 ante.
- 17 Synodical Government Measure 1969, s 4 (3); see also PARA 514 post.

UPDATE

472 Bishop's powers and duties

NOTE 5--1963 Measure s 31 repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct under the 2003 Measure see PARA 1350A et seq.

TEXT AND NOTE 14--The bishop is now president of the diocesan synod only, in consequence of the replacement of the bishop as one of the three authorities by a house of bishops, see PARA 503: Amending Canon No 7.

NOTE 15--1968 Measure consolidated in Pastoral Measure 1983.

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473. Appointment of deputy.

In respect of certain specified functions a diocesan bishop may, if he considers that he will not be able to carry out those functions by reason of illness or absence from his diocese, appoint by an instrument under his hand a suffragan or assistant bishop or an archdeacon of the diocese to perform the functions on his behalf for a period specified in the instrument or for the period of his illness or absence¹.

The functions in respect of which this power of appointment may be exercised are functions of the bishop of a diocese in relation to any of the following matters: (1) any matters arising under the Pastoral Measure 1968²; (2) purchases, sales and exchanges of parsonage houses³, loans for the erection or purchase of parsonage houses⁴, and conveyancing transactions relating to parsonage houses⁵; (3) sales and leases of glebe⁶ and conveyancing transactions relating to glebe⁷; (4) conveyances under the New Parishes Measure 1943⁸; (5) transfers of patronage rights to bishops⁹; (6) extinguishment of charges on benefices¹⁰; (7) any functions of the bishop under the Repair of Benefice Buildings Measure 1972¹¹.

Where any such function requires the application of the bishop's seal to a document, the person appointed to perform the function on his behalf must execute the document as a deed¹².

1 Pastoral Measure 1968, s 85 (1). Where a see is vacant or the bishop is unable because of illness or absence to make the appointment, it may be made by the archbishop of the province or, in the event of his illness or absence, by the other archbishop, in which case the appointment is to be for a period specified in the instrument: s 85 (3). The power of appointment may be exercised by the appointment of two or more persons qualified for the appointment and the division among them, whether territorially or otherwise, of the functions to be performed: s 85 (4).

2 Ibid s 85 (2) (a).

3 Ie under the Parsonages Measure 1938: see PARAS 1140, 1162 et seq post.

4 Ie under the Loans (Incumbents of Benefices) Amendment Act 1918: see PARA 1146 et seq post.

5 Ie under the Church Property (Miscellaneous Provisions) Measure 1960: Pastoral Measure 1968, s 85 (2) (b).

6 Ie under the Ecclesiastical Leasing Acts 1842 and 1858: see PARA 1153 et seq post.

7 Ie under the Church Property (Miscellaneous Provisions) Measure 1960: Pastoral Measure 1968, s 85 (2) (c).

8 See the New Parishes Measure 1943, ss 13-19, and PARAS 1062, 1110 et seq post: Pastoral Measure 1968, s 85 (2) (d).

9 Ie under the Church Patronage Act 1870 (see PARA 809 post): Pastoral Measure 1968, s 85 (2) (e).

10 Ie under the Queen Anne's Bounty (Powers) Measure 1939, s 4 (see PARA 1239 post): Pastoral Measure 1968, s 85 (2) (f).

11 Repair of Benefice Buildings Measure 1972, s 28: see PARA 1164 et seq post.

12 Pastoral Measure 1968, s 85 (5). As to execution as a deed, see REAL PROPERTY.

UPDATE

473 Appointment of deputy

TEXT AND NOTES--Replaced by the Church of England (Miscellaneous Provisions) Measure 1983 s 8 (repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

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474. Performance of bishop's functions by overseas bishop.

An overseas bishop¹ or a bishop consecrated in a church not in communion with the Church of England² whose orders are recognised and accepted by the Church of England² may, on the request and by the commission in writing of the bishop of a diocese in the province of Canterbury or York, and with the consent and licence in writing of the archbishop of the province, ordain persons³ and perform other episcopal functions in that diocese⁴.

1 For the meaning of 'overseas bishop', see PARA 317 note 1 ante.

2 If any question arises whether, for this purpose, a church is in communion with the Church of England or whether the orders of any church are recognised and accepted by the Church of England, it is to be determined by the Archbishops of Canterbury and York, whose decision will be conclusive: Overseas and other Clergy (Ministry and Ordination) Measure 1967, s 6 (2).

3 A person so ordained priest or deacon is deemed, for the purpose of the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, to have been ordained by the bishop making the request and issuing the commission: s 4 (2). A person so ordained must make the declaration of assent (see PARA 660 post): Revised Canons Ecclesiastical, Canon C15 para 5 (substituted by Amending Canon No. 4).

4 Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 4 (1). If an overseas bishop performs any episcopal functions in an English diocese otherwise than in accordance with these provisions, he is guilty of an offence against the laws ecclesiastical for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 4 (3).

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475. Ordination.

Only a bishop can ordain priests or deacons¹. The bishop of a diocese is enjoined to be faithful in admitting persons into holy orders, and must provide, as much as in him lies, that in every place within his diocese there are sufficient priests to minister the Word and sacraments to the people there². Subject to that obligation he has an absolute discretion (except as to certain statutory qualifications of the candidate³) and need not hold an ordination at all if there are sufficient clergy without so doing⁴.

1 Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons; Form and Manner of Making of Deacons; Form and Manner of Ordering of Priests; Revised Canons Ecclesiastical, Canon C1 para 1 (amended by Amending Canon No. 3); see also *Bishop of St Albans v Fillingham* [1906] P 163. As to ordination, see PARA 654 et seq post.

2 Revised Canons Ecclesiastical, Canon C18 para 6.

3 As to age etc. for ordination, see PARA 657 post. As to the bishop's powers to ordain clergy for service elsewhere than in England and as to the admission of clergy ordained out of the realm, see PARA 667 et seq post.

4 As to the title to orders required for a candidate for ordination, see PARA 656 post.

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476. Residence within the diocese.

The bishop must reside within his own diocese; but, by an ancient rule, he has the right, when resident in any house in London during his attendance at Parliament, or at court, or for the purpose of performing any other duties of his office, to be taken and accounted as resident within his own diocese¹.

¹ Revised Canons Ecclesiastical, Canon C18 para 8; cf. *Barton v Wells* (1789) 1 Hag Con 21 at 28, per Lord Stowell.

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477. Vestures and other ornaments.

The provisions concerning the ornaments to be used by ministers at the times of their ministrations¹ are, in general, applicable to archbishops and bishops. Certain vestures are, however, regarded as distinctively episcopal: these include the rochet, the chimere and the mitre².

The use of the cope and mitre in time of service, and of the episcopal ring and pectoral cross at all times, has been revived³.

The presentation to the newly-made bishop of a pastoral staff was abolished in 1552 and was not restored in 1662⁴, but it is now in general use without, it seems, any suggestion of illegality⁵.

1 See PARA 970 et seq post.

2 By the Book of Common Prayer, Form of Ordaining or Consecrating of an Archbishop or Bishop the elected bishop is directed (after the sermon) to be 'vested with his Rochet' and subsequently (after making his promises) to 'put on the rest of the Episcopal habit'. The latter rubrical direction, by ancient and continuous post-Reformation custom, has for over 300 years been taken to mean the chimere. Ancient and continuous custom has every presumption in its favour, although it cannot prevail against positive law: see *Ridsdale v Clifton* (1877) 2 PD 276 at 331, PC. The rochet (sometimes called the 'episcopal surplice') and the chimere (a kind of sleeveless coat) are thus described by Dean Durel (*Vindiciae* (1669) 125): 'The dress of the bishops is different from that which the Roman bishops use...for having laid aside the gown (toga) which is their usual outer dress, they put on a loose fitting tunic, with sleeves of fine linen (lino byssino), which falls a little below the knees, and over it they put on another garment entirely made of black silk (holosericam), which is without sleeves and open in front so that the lawn sleeves and the lawn tunic itself may be seen in front'. For illustrations of the early post-Reformation use of the chimere, see Tomlinson on the Prayer Book 121, and cf. at 149, 164.

3 These ornaments are not mentioned in the rubrics of the First Prayer Book of Edward VI, nor in the Ordinal of 1550, nor in any subsequent rubric. Not being mentioned in the First Prayer Book, they were not, in the view of the Privy Council, included among lawful church ornaments under the 'Ornaments Rubric': see *Liddell v Westerton* (1856) 5 WR 470, PC; *Martin v Mackonochie* (1868) LR 2 PC 365; *Hebbert v Purchas* (1871) LR 3 PC 605; *Ridsdale v Clifton* (1877) 2 PD 276, PC, in which case, when considering the question of the vestments to be worn by the parochial clergy, the Privy Council stated that it did not express any opinion as to the vestures proper to be worn by bishops, as to which separate considerations might arise (see at 307). The question of wearing the cope (a sleeveless hooded cape) was not before the court in *Hebbert v Purchas* supra, or *Ridsdale v Clifton* supra, but in the latter case it is said obiter that the use of the cope was legal up to 1662 in cathedral and collegiate churches, when administering the communion on certain occasions (see *Advertisements* of 1565, and *Canons Ecclesiastical* (1603) 24). Copes have by ancient and continuous custom been worn by bishops and other clergy on state occasions, eg at coronations, and are now largely used at other services. Their use 'on any appropriate occasion' has been expressly authorised by the Revised *Canons Ecclesiastical*: see Canon B8 para 3. Further as to the vestments worn by bishops, see the evidence given before the Royal Commission on *Ecclesiastical Discipline* 1906 (Cds. 3069, 3070, 3071), and the reports of committees of the Upper Houses of the Convocations of Canterbury and York presented 5th February 1908. As to mitres, see also *Hierurgia Anglicana*, Part 1, 223 et seq. As to the Ornaments Rubric, see further PARA 960 post.

4 Cf. rubrics in the statutory *Ordinals* of 1550, 1552 and 1662; and see Gib Cod 118. The legal position of the pastoral staff is discussed in the reports of Committees of the Upper Houses of the Convocations of Canterbury and York presented 5th February 1908, where the revival of its use is justified by reference to the rubric for the forms of consecrating an archbishop or bishop in the Ordinal of 1500, which expressly prescribed its use in that ceremony.

5 See PARA 306 ante.

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478. Privilege of bishop's charge.

The question whether a bishop's charge to his clergy is absolutely privileged in the same way as the charge of a judge to a jury, or a speech in Parliament¹, has not been decided²; but there appears to be no absolute privilege if the bishop sends a report of his charge to the press³.

¹ See LIBEL AND SLANDER.

² In *Laughton v Bishop of Sodor and Man* (1872) LR 4 PC 495 the Privy Council declined to decide the question.

³ *Laughton v Bishop of Sodor and Man* (1872) LR 4 PC 495 at 502, where a charge of the Bishop of Sodor and Man made to his clergy in the Manx Convocation was held to be a privileged communication in the ordinary sense of the term: see at 504. It does not necessarily follow, however, that the publication of his charge by a bishop in a local newspaper is equally privileged: *Laughton v Bishop of Sodor and Man* supra at 504.

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479. Bishops in the House of Lords.

The bishops of London, Durham and Winchester have seats in the House of Lords, together with twenty-one other bishops summoned in order of seniority¹. No bishop elected by *congé d'élire*² can be summoned as a lord of Parliament until his election has been confirmed³. A bishop is not a peer⁴.

1 See PARLIAMENT vol 78 (2010) PARA 829 et seq.

2 As to election, see PARA 461 ante.

3 *Evans v Ascough* (1627) Lat 233.

4 Stephens, *Laws relating to the Clergy* 163, citing the First Report on the Dignity of a Peer 70; Cruise on *Dignities* 53; and see PARA 433 note 8 ante.

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480. Patronage.

Bishops have very considerable patronage. They have in their gift a large number of benefices¹. They appoint to chancellorships², archdeaconries³, deaneries⁴, honorary canonries⁵, and most of the canonries⁶.

The bishop of the diocese has important duties in relation to the transfer of rights of patronage⁷ and the exercise of rights of presentation⁸, and is chairman of the diocesan board of patronage⁹.

1 For the details, see Crockford's Clerical Directory.

2 See PARA 1275 et seq post.

3 See PARA 497 et seq post.

4 See PARA 524 et seq post.

5 See PARA 643 et seq post.

6 See PARA 645 et seq post.

7 See PARA 802 et seq post.

8 See PARA 835 post.

9 See PARA 790 post.

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481. Regulation of public worship.

The bishop has a general right, save in respect of places and persons exempt by law or custom, of ordering, controlling and authorising all services in churches, chapels, churchyards and consecrated burial grounds within his diocese¹. In exercising this right he must act in conformity with the law relating to public worship. Except to the extent permitted by the relevant enactments, the bishop has no power to dispense with adherence to the prescribed forms of service or with the obligatory performance of the services required by law². Equally he has no power to limit the discretion of an incumbent in choosing between alternative forms of service allowed by law³. A clergyman is, however, bound by the oath of canonical obedience to obey all such commands as the bishop by law is authorised to impose⁴.

1 Revised Canons Ecclesiastical, Canon C18 para 4. See also the Book of Common Prayer, Concerning the Service of the Church, which recognises a discretion on the part of the bishop to 'take order for the quieting and appeasing' of diversity and resolving of doubts, including the right to refer a question, if necessary, for decision by the archbishop. As to the *jus liturgicum*, see PARA 934 note 10 post.

2 For the limits within which deviation from the prescribed forms is permissible, and for the bishop's powers of dispensation, see PARAS 934, 941 post. See also Sparrow Simpson, *Dispensations* (SPCK 1935).

3 *Hutchins v Denziloe and Loveland* (1792) 1 Hag Con 170, per Lord Stowell. See also PARA 936 post, and PARA 938 text and note 5 post.

4 *Long v Lord Bishop of Cape Town* (1863) 1 Moo PCCNS 411 at 445, per Lord Kingsdown; *Barnes v Shore* (1846) 8 QB 640.

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D. STIPENDS AND PENSIONS

482. Schemes to secure income.

In the case of any see, the Church Commissioners¹, after consultation with the bishop and the diocesan board of finance, may, with Her Majesty's consent, prepare and submit to Her Majesty in Council for confirmation a scheme for vesting in the commissioners all endowments² and other property³ belonging to or held in trust for the see or the bishop and for securing to the bishop by way of a charge on their general fund such reduced stipend as the commissioners deem appropriate⁴.

The Order in Council confirming the scheme must be published in the London Gazette and, upon publication, the scheme comes into operation and has the force of law⁵, whereupon so much of any Act of Parliament, Measure, Order in Council, trust deed or other instrument as is inconsistent with any provision of the scheme ceases to have effect in relation to the see affected⁶. A scheme may be amended at any time by a subsequent scheme prepared, submitted and confirmed in the same manner but the amending scheme must be approved by the Standing Committee of the General Synod before it is submitted for confirmation⁷.

The endowments and other property to be vested in the commissioners under the scheme must be listed in a schedule to it and, upon the scheme coming into operation, vest in the commissioners without any conveyance or other assurance, freed and discharged from all previously existing trusts in favour of the see or the bishop⁸. In respect of any see where a scheme is in force the commissioners have a discretion to pay the whole or any part of the stipend of any suffragan bishop or any chaplain to the bishop⁹, and also such office expenses (including salaries and provision for the superannuation of secretaries and clerks) as they consider it necessary for the bishop to incur¹⁰.

1 The Church Commissioners act as successors to the Ecclesiastical Commissioners: see PARA 362 ante.

2 'Endowments' includes any commutation or other payment charged on the commissioners' general fund and any money in their hands which represents the proceeds of a sale of land or of a house of residence or a fund for repair of a house of residence: Episcopal Endowments and Stipends Measure 1943, s 8 (1).

3 'Property' includes real and personal property of every description except an advowson or right of patronage: *ibid* s 8 (1).

4 *Ibid* s 1 (1). As to the commissioners' general fund, see PARA 1234 post. The Measure applies to an archbishop and his see as it applies to a bishop and his see: s 8 (2). It is believed that schemes under the Measure have been made in respect of all the sees of the Church of England.

5 *Ibid* s 1 (2).

6 *Ibid* s 9.

7 *Ibid* s 7; Synodical Government Measure 1969, s 2 (2).

8 Episcopal Endowments and Stipends Measure 1943, s 2.

9 *Ibid* s 5 (a). As to suffragan bishops, see PARA 493 et seq post.

10 *Ibid* s 5 (b).

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483. Houses of residence.

Where by any scheme¹ a house of residence² has become vested in the Church Commissioners they may, at any time while it remains so vested, make any alterations they deem necessary and let it to the bishop³ and, if at any time they are of opinion that it is too large, or is not and cannot be made convenient, or is not required for occupation by the bishop, they may (1) transfer it by agreement to the diocesan authority⁴ for use for purposes connected with its diocese⁵; (2) convert it or any part of it for use for such other purposes as, having regard to any historical or other associations attaching to it, they may from time to time deem proper⁶; (3) sell, let or otherwise dispose of it⁷; or (4) wholly or partly demolish it⁸.

Where a house of residence has been so disposed of, converted or demolished the commissioners may provide another house and let it to the bishop, and, where part only has been demolished or converted for other use, they may alter or adapt and let the remainder of it to the bishop⁹. Any house or part of a house let to the bishop under these provisions is an episcopal house of residence of the see¹⁰. Where the commissioners consider that the exercise of any of the foregoing powers may prejudicially affect any building of archaeological, historic or artistic interest, they must consult with the Ancient Monuments Board for England¹¹ before exercising that power¹².

1 le a scheme under the power mentioned in PARA 482 ante.

2 'House of residence' includes any grounds attached to such a house and any buildings occupied with it: Episcopal Endowments and Stipends Measure 1943, s 8 (1).

3 'Bishop' means the bishop for the time being of the diocese in question: *ibid* s 8 (1).

4 'Diocesan authority' means the diocesan board of finance or any existing or future body appointed by the diocesan synod to act as trustees of diocesan trust property: *ibid* s 8 (1); Parochial Church Councils (Powers) Measure 1956, s 1; Synodical Government Measure 1969, s 4 (7).

5 Episcopal Endowments and Stipends Measure 1943, s 3 (1) (a).

6 *Ibid* s 3 (1) (b).

7 *Ibid* s 3 (1) (c).

8 *Ibid* s 3 (1) (d). Before deciding to sell the residence or to demolish or convert it or any part of it, the commissioners must consult with the diocesan advisory committee (see PARA 1321 post) constituted under the Faculty Jurisdiction Measure 1964, s 13: Episcopal Endowments and Stipends Measure 1943, s 3 (1) proviso.

9 *Ibid* s 3 (2).

10 *Ibid* s 3 (3).

11 See generally NATIONAL CULTURAL HERITAGE.

12 See the Episcopal Endowments and Stipends Measure 1943, s 4.

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484. Pension rights.

A diocesan bishop¹ who retires after performing a qualifying period of pensionable service² is entitled to receive a pension from the Church Commissioners for the remainder of his life³. For this purpose the standard retiring age is seventy years⁴ and the minimum period of pensionable service to qualify for a pension at the full rate is forty years⁵. On that basis, the annual rate of pension is £1,750 for the bishops of London, Durham and Winchester, and £1,250 for other diocesan bishops⁵. If the period actually served is less than forty years, the pension is proportionately reduced⁶. If the bishop retires under the retiring age by reason of infirmity, his pension is reduced by 1 per cent for each year by which his age is less than the retiring age⁷. If he retires between the age of sixty-five and seventy otherwise than on the ground of infirmity his pension is reduced by 5 per cent for each year by which his age is less than the retiring age⁸.

Special provision is made for the case of a bishop who resigns because a change of administration is desirable; if he has not attained the retiring age he is entitled to a pension of an amount equal to three-quarters of the pension to which he would have been entitled if he had retired by reason of infirmity⁹.

Provisions as to pensions for bishops' widows and dependants are similar to those for the widows and dependants of other clergy¹⁰.

1 This includes the Bishop of Sodor and Man: Clergy Pensions Measure 1961, s 46 (1).

2 For the meaning of 'qualifying period of pensionable service', see *ibid* s 1 (1), and PARA 742 post.

3 *Ibid* s 1 (1). The pension scheme established by the Measure is non-contributory and applies to all clerks in holy orders, including bishops: see ss 1 (1), 46 (1). For a fuller description of the scheme, see PARA 738 et seq post.

4 *Ibid* s 46 (1). The General Synod may, however, by resolution from time to time determine a different retiring age: s 46 (1); Synodical Government Measure 1969, s 2 (2).

5 Clergy Pensions Measure 1961, s 1 (1), Sch. 1, Part 1 para 1, Table.

6 *Ibid* Sch. 1, Part I para 2.

7 *Ibid* Sch. 1, Part II; see also PARA 486 note 6 post.

8 *Ibid* Sch. 1, Part III; Clergy Pensions (Amendment) Measure 1969, s 1.

9 Bishops (Retirement) Measure 1951, ss 3, 4; Clergy Pensions Measure 1961, s 47, Sch. 2; and see PARA 487 post.

10 *Ibid* ss 10-16; Clergy Pensions (Amendment) Measure 1972, ss 1 (2) (b), 4: see PARA 754 et seq post.

UPDATE

484 Pension rights

TEXT AND NOTES--Standard retiring age now 65 and minimum qualifying period for pension at full rate is 32: Church of England Pensions Regulations 1988, SI 1988/2256.

Guaranteed minimum pension now payable notwithstanding that a qualifying period of service has not been performed: SI 1988/2256, see PARA 742.

NOTE 1--Definition of diocesan bishop replaced: Church of England Pensions Regulations 1988, SI 1988/2256.

TEXT AND NOTES 5-8--Clergy Pensions Measure 1961 Sch 1 replaced: SI 1988/2256.

TEXT AND NOTES 7, 8--Revoked: SI 1975/136; 1985/2081.

NOTE 9--1951 Measure repealed: Bishops (Retirement) Measure 1986 Schedule.

TEXT AND NOTE 10--Provisions for bishops' pensions are now the same as for other clergy and are contained in the Church of England (Pensions) Measures 1961 to 2009 and the Church of England Pensions Regulations 1988, SI 1988/2256. No contribution paid under s 11 or 14 of the 1961 Measure may be repaid: 1988 Measure s 10(2).

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E. RETIREMENT AND VACANCIES

485. How vacancies may occur.

A bishopric may become vacant by death, deprivation¹, translation² resignation or retirement³.

Provisions have been made for the voluntary or compulsory retirement of diocesan and suffragan bishops if incapacitated by physical or mental disability, and for voluntary retirement if a change of administration is desirable⁴.

¹ Ecclesiastical Jurisdiction Measure 1963, ss 49 (1) (a), 55, 56; Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1: see PARAS 1373, 1374 post. The provisions of these enactments operate, it seems, to the exclusion of the jurisdiction formerly exercisable by the archbishop, as to which see *Read v Bishop of Lincoln* (1889) 14 PD 88; *Read v Bishop of Lincoln* [1891] P 9; on appeal [1892] AC 644, PC.

² *Evans and Kiffins v Askwith* (1627) W Jo 158 at 160: see PARA 471 ante.

³ See PARAS 486, 487 post.

⁴ See the Bishops (Retirement) Measure 1951, and PARAS 486, 487 post.

UPDATE

485 How vacancies may occur

NOTE 1--1963 Measure ss 55, 56 repealed: Clergy Discipline Measure 2003. See now 2003 Measure s 24; and PARA 1350B.

TEXT AND NOTE 4--1951 Measure replaced: Bishops (Retirement) Measure 1986.

Provision as to voluntary resignation is made as follows: where a person holding the office of diocesan bishop or suffragan bishop wishes to resign his office he must, after consultation with the archbishop, tender his resignation to the archbishop, in a written instrument in the prescribed form: s 1(1). 'Prescribed' means prescribed by the Vicars-General of the provinces of Canterbury and York acting jointly: s 10(1). If the archbishop decides to accept the resignation, he must, within 28 days of receiving the instrument, by indorsement upon the instrument in the prescribed form declare the bishopric vacant as from a date specified in the indorsement, which subject to the provisions of the Ecclesiastical Offices (Age Limit) Measure 1975 ss 1(3), 3, be the date proposed by the bishop in the instrument or such later date as may be agreed by the archbishop and bishop concerned; the instrument must be filed in the provincial registry: 1986 Measure s 1(2).

Where a bishopric is declared vacant under 1986 Measure, any other preferment held by the bishop must also be vacated unless the archbishop declares that it shall not be vacated: s 8(1). 'Preferment' includes an archbishopric, a bishopric, archdeaconry, deanery or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which require the discharge of any spiritual duty: s 10(1).

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486. Retirement of bishop for incapacity.

If in the opinion of the archbishop of the province a bishop is incapacitated by physical or mental disability from the due performance of his episcopal duties, the bishop may, and if so requested by the archbishop with the concurrence of three bishops selected by him from a panel of bishops appointed by the Upper House of the convocation of the province must, tender the resignation of his bishopric to the archbishop¹. The bishop is entitled to notice² of the intention to make the request and may demand, within fifteen days after receiving the notice or within such extended time as the archbishop allows, a medical examination³.

If the bishop resigns, the bishopric must be declared vacant by the archbishop⁴, and if the bishop refuses or fails within two months of a request to comply with it, or is by reason of infirmity prevented from complying, the archbishop may declare the bishopric vacant⁵. In neither case is the declaration effective unless and until it is confirmed by Her Majesty in Council⁶. If the declaration is confirmed the vacancy may be filled in the same manner as if the bishop were dead and, unless the archbishop otherwise directs, any other preferment held by the bishop in addition to his bishopric must also be vacated⁷.

1 Bishops (Retirement) Measure 1951, ss 1 (1), 16 (1). The Measure applies to the bishop of every diocese, whether created before or after the passing of the Measure, within the province of Canterbury or York, and to every suffragan bishop who is commissioned by the bishop of any such diocese: s 11. As to the application of this Measure to archbishops, see PARAS 437, 438 ante.

2 Notices may be sent through the post by registered letter or the recorded delivery service addressed to the bishop at his episcopal residence: *ibid* s 15; Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5; Recorded Delivery Service Act 1962, s 1 (1).

3 Bishops (Retirement) Measure 1951, s 1 (1) proviso. The expenses of the examination are payable by the Church Commissioners out of their general fund: s 1 (1) proviso.

4 *Ibid* 13; Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5.

5 *Ibid* s 1 (2).

6 *Ibid* ss 1 (2), 13. The archbishop must send Her Majesty a copy of the declaration, a petition for confirmation and a copy of any medical report: s 14 (1). A bishop whose bishopric is declared vacant under this provision is deemed for the purposes of the Clergy Pensions Measure 1961 to have retired by reason of infirmity on the date on which the declaration takes effect: s 2; and see PARA 484 ante.

7 Bishops (Retirement) Measure 1951, s 14 (2).

UPDATE

486 Retirement of bishop for incapacity

TEXT AND NOTES--Replaced: Bishops (Retirement) Measure 1986 s 3. A bishop must now retire at 70; Ecclesiastical Offices (Age Limit) Measure 1975 s 1. An archbishop may authorise continuance in office for a period not exceeding one year: s 2. The restriction does not apply to bishops already holding office on 1 January 1976: s 1(4).

Not less than six months before the date on which a person holding the office of diocesan bishop or suffragan bishop is required to vacate his office in accordance with

the above age limit, the archbishop must by written instrument in the prescribed form declare the bishopric vacant as from that date or, if his continuance in office beyond that date is authorised under the 1975 Measure s 3(1), from the later date so authorised: Bishops (Retirement) Measure 1986 s 2(1). For the meaning of 'prescribed' see *infra*. Where, after the making of such an instrument, in the case of an instrument relating to a diocesan bishop, the archbishop authorises his continuance in office under the 1975 Measure s 3(1), or in the case of an instrument relating to a suffragan bishop, the diocesan bishop authorises his continuance in office under s 3 the archbishop may by written instrument in the prescribed form substitute for the date of vacancy under the 1986 Measure s 2(1) the date of the expiration of the period for which continuance in office is authorised: s 2(2). Any instrument made under these provisions must be filed in the provincial registry: s 2(3). 'Archbishop' in relation to any diocesan bishop means the archbishop of the province in which his diocese is situated and in relation to any suffragan bishop means the archbishop of the province in which the diocese of the bishop to whom he is suffragan is situated: s 10(1).

The concurrence of two senior diocesan bishops of the province to the archbishop's request is required: s 3(1). Resignation must be tendered in a written instrument in the prescribed form, which means a form prescribed by the Vicars-General of the provinces of Canterbury and York acting jointly: ss 3(1), 10(1).

Where a bishopric is declared vacant under s 3 the bishop is treated for the purposes of the Church of England Pensions Regulations 1988, SI 1988/2256, reg 4 (see *PARA* 742) as having retired on the ground of infirmity on the date on which the bishopric is declared vacant: 1986 Measure s 7. Where a vacancy has been declared under this Measure any other preferment held by the bishop must be vacated unless the archbishop declares that it shall not be vacated: s 8(1). Provision relating to manner in which the vacancy may be filled repealed and not replaced: Schedule. Any declaration relating to vacation of other preferments must be made in the written instrument under s 3(1) on the indorsement under s 3(4): s 8(2). For meaning of 'preferment' see *PARA* 485.

On receiving an instrument of resignation under s 3(1), the archbishop must by indorsement on the instrument in the prescribed form declare the bishopric vacant as from a date specified in the indorsement: s 3(4).

The date from which a bishopric may be declared vacant cannot be earlier than the date of the archbishop's indorsement of the instrument of resignation under s 3(4), or the date of the instrument in which the archbishop declares the bishopric vacant where the bishop refuses or fails within two months to tender his resignation or is prevented by infirmity from so doing: s 3(6).

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487. Retirement of bishop if change of administration is desirable.

Where a bishop¹ considers that in the interests of the diocese of which he is bishop or of the diocese of the bishop by whom he is commissioned a change of administration is desirable he must send notice to that effect to the archbishop and tender his resignation². The bishopric is then declared vacant by the archbishop, but the declaration requires to be confirmed by Her Majesty in Council before taking effect³.

1 See PARA 486 note 1 ante.

2 Bishops (Retirement) Measure 1951, s 3. As to the pension rights of a bishop resigning under this section, see PARA 484 ante.

3 Ibid s 13; Ecclesiastical Jurisdiction Measure 1963, s Sch. 5. As to confirmation and the filling of the vacancy, the same provisions apply as in the case of retirement for incapacity under the Bishop (Retirement) Measure 1951, s 1: see PARA 486, text and notes 4-7 ante.

UPDATE

487 Retirement of bishop if change of administration is desirable

TEXT AND NOTES--Repealed: Bishops (Retirement) Measure 1986 Schedule.

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488. Guardianship of the temporalities.

During the vacancy of a bishopric the Queen is the guardian and custodian of the temporalities¹. The temporalities are those things which the bishops have by livery from the Queen, such as castles, manors, land, tenements, parsonages, tithes and all other certainties for which the Queen is responsible during the vacancy². They include rights of presentation to livings of which the bishop in right of his see is patron, and even if the Crown restores the temporalities to the new bishop without filling an incumbency which is vacant during the time when the Crown holds the temporalities, the right to fill it remains with the Crown³.

The temporalities remain in the Queen's hands until the new bishop sues for them out of her hands by a writ de restitutione temporalium⁴. He cannot do this as of right until he has been consecrated⁴, or, if already a bishop, confirmed; the Queen by her letters patent may, however, grant them to him after confirmation and before consecration⁴. The new bishop, as soon as he is consecrated and confirmed, usually receives the restitution of his temporalities entire and untouched from the Queen. Thereupon he has a fee simple in his bishopric, and may maintain an action for the profits⁵.

The temporalities of all archbishoprics and bishoprics (except rights of patronage) are now vested in the Church Commissioners⁶.

1 1 Bl Com (14th Edn) 380; Prerogativa Regis (temp. incert.) c. 16 (repealed); *Covert's Case* (1600) Cro Eliz 754.

2 *Bishops' Temporalities and Spiritualities Case* (1583) Sav 52; Watson, *Clergyman's Law* (4th Edn) 760.

3 *Rennell v Bishop of Lincoln* (1827) 7 B & C 113 at 186; affd. sub nom. *Mirehouse v Rennell* (1833) 1 Cl & Fin 527, HL; *Ex parte Tarrant* (1783) Rom 119.

4 Watson, *Clergyman's Law* (4th Edn) 764.

5 1 Bl Com (14th Edn) 380; Co Litt 67a, 341b.

6 Ecclesiastical Commissioners Act 1860, s 2 (repealed); Church Commissioners Measure 1947, ss 1, 2.

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489. Guardianship of the spiritualities.

Whenever a bishopric is vacant the guardianship of the spiritualities belongs to the dean and chapter of the cathedral church of the diocese unless by prescription or composition it belongs to the archbishop of the province acting by and through such person or persons as he may nominate according to the prescription or composition¹. In respect of most dioceses it seems that the guardianship has by long usage been exercised by the archbishop².

The guardian or guardians of the spiritualities exercise the spiritual jurisdiction of the diocese during the vacancy, including the giving of institution to benefices, the granting of licences for the solemnisation of matrimony without the publication of banns and the granting of commissions for ordination *sede vacante*³, but their powers do not extend to such matters as are excluded from their jurisdiction by the laws of the realm, or to the presentation to benefices *sede vacante* of which the bishop is patron, which presentation belongs to the Crown by the royal prerogative³.

The functions of a diocesan bishop under the Church Representation Rules are, during a vacancy in the see, exercisable by such person in episcopal orders as the archbishop of the province may appoint⁴.

After election and confirmation, or appointment by letters patent, the new bishop becomes entitled to exercise all the spiritual jurisdiction exercised during the vacancy by the guardian, whose power then ceases⁵.

1 Revised Canons Ecclesiastical, Canon C19 para 2.

2 See Godolphin's Repertorium Canonicum 39-42; Ayl Par 125; Phillimore, Ecclesiastical Law (2nd Edn) 62, 63. In the diocese of Durham the claim to the guardianship appears to be still contested, but in practice it is exercised by the dean and chapter: see Garth Moore, Introduction to English Canon Law (1967 Edn) 28. As to the effect of a vacancy in the archiepiscopal see, see PARA 441 ante.

3 Revised Canons Ecclesiastical, Canon C19 para 3. See also PARA 488 ante.

4 Church Representation Rules, r 43 (7), contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865): see PARA 432 ante. These functions include the bishop's functions as one of the authorities which together constitute the diocesan synod: Church Representation Rules, r 43 (7); see PARA 503 post. As to the rules, see PARA 389 ante.

5 Gib Cod 114. But if he has not yet been consecrated his authority is limited, and it is only upon consecration that he becomes entitled to the full exercise of episcopal functions: Ayl Par 120, 121.

UPDATE

489 Guardianship of the spiritualities

NOTE 4--These functions now include the bishop's functions as president of the diocesan synod: r 43(7); SI 1980/178.

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Meaning and objects of visitation.

F. EPISCOPAL VISITATION

490. Meaning and objects of visitation.

Visitation, in the common acceptance of the term, denotes the act of the bishop or of some other Ordinary going his circuit throughout his diocese or district with a full power of inquiring into such matters as relate to the government and discipline of the church.

The principal object of visitation is that the bishop, archdeacon or other person assigned to visit may get some good knowledge of the state, sufficiency and ability of the clergy and other person whom he is to visit¹.

Visitation implies, however, some coercive authority²; the bishop has the right to visit his diocese in a more solemn manner at times and places limited by law or custom³, and on his visitation to perform all such acts as by law or custom are assigned to his charge in that behalf for the edifying and well-governing of Christ's flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss⁴. During the time of the visitation the jurisdiction of all inferior Ordinaries is suspended, save in places which by law or custom are exempt⁵.

The Roman canon law concerning visitors has not, as a whole, been incorporated into the common law, and consequently has no binding effect except insofar as it has been adopted by custom or legislation⁶.

Even within the accepted body of English ecclesiastical law many of the reported cases are of doubtful relevance at the present day, when a visitation no longer has the character, or even the semblance, of court proceedings⁷.

1 See the Revised Canons Ecclesiastical, Canon C18 para 4. As to archiepiscopal visitations, see PARA 431 ante; as to archidiaconal visitations, see PARA 500 post.

2 Ayl Par 514.

3 This provision, insofar as it concerns the times of visitation, supersedes the former requirement (contained in the Canons Ecclesiastical (1603) 60 (repealed)) that an episcopal visitation should normally be held every third year.

4 Revised Canons Ecclesiastical, Canon G5 para 1.

5 Ibid Canon G5 para 2. It has been said that the bishop brings with him not only the means of visiting the churches and directing ecclesiastical affairs but the power of acting judicially by his official principal ie the chancellor of the diocese (*R v Thorogood* (1840) 3 Per & Dav 629 at 640, per Lord Denman); but the exercise of such power is now governed by the Ecclesiastical Jurisdiction Measure 1963 (see PARA 491 post; and see also PARA 1275 et seq post). An episcopal visitation is sometimes conducted by the chancellor, acting on behalf of the bishop.

6 *Philips v Bury* (1694) 1 Ld Raym 5 at 7; 1 Bl Com (14th Edn) 79, 80. As to visitation generally, see CHARITIES vol 8 (2010) PARA 510 et seq, and CORPORATIONS vol 9(2) (2006 Reissue) PARA 1186.

7 See PARA 491 post. The effect of modern changes is thus described in the Report of the Archbishop's Commission on Ecclesiastical Courts (SPCK 1954) 51: 'A bishop's relationship with both his clergy and his laity today is predominantly a pastoral one. It should be recognised that a great change in the general conception of this relationship has taken place not only since the middle ages but even during the past century. The bishop is today first and foremost a pastor rather than a judge'.

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491. Conduct and scope of visitation.

Every spiritual person is visitable by the Ordinary. This includes a dean and chapter¹ and the inferior clergy, and the Ordinary may also visit spiritual hospitals². Laymen (except churchwardens and perhaps sidesmen) are not visitable³.

When the bishop summons his visitation he must deliver or cause to be delivered to the minister and churchwardens of every parish such articles of inquiry as he requires them to ground their presentments upon⁴, together with the form of declaration which must be made immediately before any such presentment⁵. In modern practice the making of presentments, in the sense in which the word was formerly understood⁶, is uncommon and would probably be confined to complaints by the churchwardens against the incumbent⁷.

Although the Ordinary's authority over the clergy of his diocese formerly included a summary power of correction, his power of correcting them can now be exercised only by proceedings in the ecclesiastical courts. Private admonition may in some cases be sufficient, but where it is necessary to take proceedings they must be by articles against a clergyman when acting contrary to his duty as a minister of the Church of England and as a beneficed clergyman⁸, or otherwise by the legal procedure for the time being in force⁹.

Fees are no longer payable at a visitation¹⁰.

1 Stephens, Laws relating to the Clergy 1379; *Harrison v Archbishop of Dublin* (1713) 2 Bro Parl Cas 199, HL; *Bishop of Kildare v Archbishop of Dublin* (1724) 2 Bro Parl Cas 179. Provision is required to be made in the constitution and statutes of each cathedral respecting the bishop's functions as visitor: see PARA 617 post. In a diocesan visitation it was usual in the past for the bishop to visit first his cathedral church and afterwards the diocese (see Gib Cod 957), but it seems doubtful whether this practice is now generally observed.

2 Goldolphin's Repertorium Canonicum 34; *Philips v Bury* (1694) reported in 2 Term Rep 346 at 353; *Walrond v Pollard* (1568) 3 Dyer 273 a. For the exemption of peculiars, see PARA 492 post.

3 *Anon* (1608) Noy 123.

4 Revised Canons Ecclesiastical, Canon G6 para 1.

5 Ibid Canon G6 para 2. This requirement applies also in the case of a visitation by an archbishop, archdeacon or other person having ecclesiastical jurisdiction.

6 Presentments were formerly associated with an inquisitorial procedure in respect of offences by both clergy and laity: see Canons Ecclesiastical (1603) 109 et seq. (repealed).

7 See PARA 552 post.

8 *Sanders v Head* (1843) 2 Notes of Cases 355 at 376, per Sir H. Jenner Fust, Dean of Arches.

9 See the Ecclesiastical Jurisdiction Measure 1963, s 69; and cf. the similar provision contained in the Church Discipline Act 1840, s 23 (repealed), and *Re Dean of York* (1841) 2 QB 1. See also PARAS 472, 490 ante, 1350 et seq post.

10 The fees formerly payable in respect of each parish were abolished by the Legal Officers Fees Order 1974, S.I. 1974 No. 1837, art. 2 (iii), and the procuration fees formerly payable by each incumbent were abolished by the Ecclesiastical Jurisdiction Measure 1963, s 82 (3). Procurations were in their origin refreshments provided for the bishop or archdeacon by the incumbents of outlying parishes, when visited. They were afterwards commuted into fixed money payments, charged upon the benefice: see *Saunderson v Clagget* (1721) 1 P Wms 657; *Archdeacon of Exeter v Green* [1913] P 21. See also Ayl Par 429 et seq.

UPDATE

491 Conduct and scope of visitation

NOTE 9--1963 Measure s 69 amended: Clergy Discipline Measure 2003 Sch 2.

NOTE 10--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

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492. Exemption of peculiars.

Some places, called 'peculiars', are exempt from the visitation of the customary Ordinary, and in the case of royal peculiars are visitable only by the Crown¹. Most of the peculiars which once existed² were abolished by statute³, but royal residences and certain other places still remain as peculiars⁴. The Temple Church is extra-diocesan.

The powers of the archbishops and bishops may, however, in certain cases be exercised over peculiars by virtue of express statutory provisions⁵.

1 See the Ecclesiastical Licences Act 1533, ss 14, 17. See also PARA 355 ante.

2 There were as appears from the Report of the Ecclesiastical Commissioners in 1832, p. 21, over 300 such special ecclesiastical jurisdictions in England including royal peculiars, of which there were eleven: *Combe v De La Bere* (1882) 22 ChD 316 at 328, CA, per Chitty J.

3 Ecclesiastical Commissioners Act 1836, s 10; Ecclesiastical Commissioners Act 1850, s 24; *Combe v De La Bere* (1882) 22 ChD 316, CA.

4 Eg Westminster Abbey, St George's, Windsor, and the Chapels Royal. The site of the old Palace of Westminster is not now a peculiar, being no longer a royal residence: *Combe v De La Bere* (1882) 22 ChD 316, CA. See also *Bishop of Lichfield v Lambert* (1929) 46 TLR 24. A person who is not a parishioner has no right to attend service at a church which is a royal peculiar, and accordingly he may be excluded from Westminster Abbey by the dean: *Cole v Police Constable 443A* [1937] 1 KB 316, [1936] 3 All ER 107, DC. Other remaining peculiars are Battle, Bocking, Guernsey and its dependencies, Jersey and Stamford: see the Church of England Year Book, 'Royal Peculiars, the Chapels Royal etc.'. See also PARA 638 note 1 post.

5 See eg the Pluralities Act 1838, s 108. See also the Ecclesiastical Jurisdiction Measure 1963, s 83 (3), which provides that, subject to certain provisions applicable to the parishes of St Margaret and St John in the City of Westminster, the rectories of which are annexed to canonries of Westminster Abbey (see the Ecclesiastical Commissioners Act 1840, s 29), nothing in the Measure of 1963 is to be taken as authorising proceedings against a holder of office in a royal peculiar.

UPDATE

492 Exemption of peculiars

NOTE 3--1836 Act s 10, 1850 Act s 24 repealed: Statute Law (Repeals) Act 2004.

NOTE 5--1963 Measure s 83(3) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see s 35.

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(iii) Suffragan Bishops

493. Status and appointment of suffragan bishops.

Strictly speaking all the bishops of a province are suffragans or helpers to the archbishop, but the term 'suffragan' is now only applied to bishops who assist the diocesan bishop.

When a diocesan bishop desires to have a suffragan, he petitions the Queen to appoint one of two spiritual persons named by him whereupon Her Majesty has power to give to one of those two persons the title of bishop suffragan of such see as she may think convenient¹. The Queen then sends her letters patent to the archbishop of the province requiring him to consecrate that person within three months, unless he is already a bishop². Two bishops or suffragans must assist at the consecration³.

Every person who is to be consecrated or translated to a suffragan bishopric must first take and swear the oath of allegiance⁴, the oath of due obedience to the archbishop and to the metropolitan church of the province⁵, and must make and subscribe the declaration against simony⁶, and on the occasion of his consecration and investment by the archbishop must make the declaration of assent⁷.

1 Suffragan Bishops Act 1534, s 1. A list of the towns which are to be taken and accepted for sees of bishops suffragan is contained in s 1, and other towns may be added to the list from time to time by Order in Council: Suffragans Nomination Act 1888, s 2: see the Suffragan Bishops, Sees, Order in Council dated 5th July 1889, and other Orders in Council, dated 21st March 1890, S.R. & O. 1901 No. 188, S.R. & O. 1904 No. 1782, S.R. & O. 1909 No. 749, S.R. & O. 1911 No. 789, S.R. & O. 1913 No. 1266, S.R. & O. 1918 No. 1009, S.R. & O. 1922 No. 1323, S.R. & O. 1923 Nos. 967, 1282, S.R. & O. 1925 No. 100, S.R. & O. 1926 Nos. 90, 1011, S.R. & O. 1927 No. 713, S.R. & O. 1930 No. 861, S.R. & O. 1934 No. 892, S.R. & O. 1935 No. 686, S.R. & O. 1936 No. 763, S.R. & O. 1938 No. 1567, S.R. & O. 1939 No. 153. The choice of title is restricted to the towns specified in this list: Suffragan Bishops Act 1534, s 1. The title chosen must be that of a town within the same province as the see of the diocesan bishop (s. 1); in practice it is usually that of a town within the same diocese.

The titles of the suffragan bishops currently holding office, with the dioceses in parentheses, are as follows: Province of Canterbury: (Canterbury) Dover, Croydon, Maidstone; (London) Kensington, Willesden, Stepney, Edmonton, Fulham; (Winchester) Southampton, Basingstoke; (Bath and Wells) Taunton; (Birmingham) Aston; (Bristol) Malmesbury; (Chelmsford) Colchester, Barking, Bradwell; (Chichester) Horsham, Lewes; (Derby) Repton; (Ely) Huntingdon; (Exeter) Crediton, Plymouth; (Gloucester) Tewkesbury; (Guildford) Dorking; (Lichfield) Shrewsbury, Stafford; (Lincoln) Grimsby, Grantham; (Norwich) Lynn, Thetford; (Oxford) Buckingham, Dorchester, Reading; (Rochester) Tonbridge; (St Albans) Bedford, Hertford; (St Edmundsbury and Ipswich) Dunwich; (Salisbury) Sherborne, Ramsbury; (Southwark) Kingston on Thames, Woolwich; (Truro) St German's; (Worcester) Dudley; Province of York: (York) Selby, Whitby, Hull; (Durham) Jarrow; (Blackburn) Burnley, Lancaster; (Carlisle) Penrith; (Chester) Birkenhead, Stockport; (Liverpool) Warrington; (Manchester) Hulme, Middleton; (Ripon) Knaresborough; (Sheffield) Doncaster; (Southwell) Sherwood; (Wakefield) Pontefract.

2 Suffragan Bishops Act 1534, ss 1, 3; Suffragan Bishops Act 1898, s 1. The suffragan then has all powers appertaining to his office: Suffragan Bishops Act 1534, s 2.

3 Ibid s 5.

4 Revised Canons Ecclesiastical, Canon C13 para 1.

5 Ibid Canon C14 para 1.

6 Ibid Canon C16 para 1.

7 Ibid Canon C15 paras 1 (1), (3), 3 (substituted by Amending Canon No. 4).

UPDATE

493 Status and appointment of suffragan bishops

TEXT AND NOTES 1-3--A diocesan bishop requires the approval of both the diocesan synod and General Synod before he may petition for the creation of a suffragan see in his diocese under the Suffragan Bishops Act 1534 or petition for the appointment of a suffragan to a see vacant for more than five years: Dioceses Measure 1978 s 18 (repealed for certain purposes by the Dioceses, Pastoral and Mission Measure 2007 Sch 7). Functions of the standing committee under s 18 are transferred to the Archbishops' Council (as to which see PARA 427A): Church of England (Transfer of Functions) Order 1998, SI 1998/1715.

TEXT AND NOTE 6--This declaration is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iii) Suffragan Bishops/494. Suffragan bishop's powers and duties.

494. Suffragan bishop's powers and duties.

It is the duty of a suffragan bishop to endeavour faithfully to execute such things pertaining to the episcopal office as are commissioned to him by the diocesan bishop to whom he is suffragan¹. He is empowered to use, have or execute only such jurisdiction or episcopal power or authority in any diocese as are licensed or limited to him by the bishop of that diocese².

A suffragan bishop must reside within the diocese of the bishop to whom he is suffragan unless he has a licence from that bishop to reside elsewhere³. He is, by express statutory provision, permitted to hold two benefices with cure⁴. He is not entitled to sit in the House of Lords; but he may be elected to the Upper House of the convocation of the province within which he is a suffragan bishop⁵. His style and title is 'bishop suffragan of the same see whereunto he shall be named'⁶. He is an ex officio member of the diocesan synod⁷ and of the pastoral committee⁸ in his diocese. The diocesan bishop may nominate any suffragan or assistant bishop of the diocese to act in his place as a member and as chairman of the diocesan board of patronage⁹.

1 Revised Canons Ecclesiastical, Canon C20 para 1.

2 Suffragan Bishops Act 1534, s 4; Revised Canons Ecclesiastical, Canon C20 para 2.

3 Ibid Canon C20 para 3; see also the Suffragan Bishops Act 1534, s 6 proviso.

4 Ibid s 7.

5 Revised Canons Ecclesiastical, Canon H3 paras 1, 2 (added by Canon promulgated 4th February 1975): see PARA 444 ante.

6 Suffragan Bishops Act 1534, s 1.

7 Church Representation Rules, r 24 (2) (a) (i), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865): see PARA 505 post.

8 Pastoral Measure 1968, s 1, Sch. 1 para 3: see PARA 521 post.

9 Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (3): see PARA 790 post.

UPDATE

494 Suffragan bishop's powers and duties

NOTE 2--Suffragan Bishops Act 1534 s 4 amended: 1978 Measure s 15(2)(b).

NOTE 3--Suffragan Bishops Act 1534 s 6 amended: 1978 Measure s 15(6).

NOTE 4--Repealed: Statute Law (Repeals) Act 1977.

TEXT AND NOTE 6--For provisions relating to the creation and revival of suffragan sees, see 1978 Measure s 18, PARA 493.

TEXT AND NOTE 7--Rule 24 now r 30: SI 1994/3118. A suffragan bishop is now a member of the diocesan synod by virtue of his membership of the house of bishops: see Church Representation Rules r 30(1), (2); SI 1980/178, SI 1994/3118. See further PARA 503.

NOTE 8--Consolidated in Pastoral Measure 1983; see s 1, Sch 1 para 3 (both repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

TEXT AND NOTE 9--Now the Patronage (Benefices) Measure 1986 Sch 3 para 2, omitting the words 'and as chairman'.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iii) Suffragan Bishops/495. Retirement and pension rights.

495. Retirement and pension rights.

The provisions governing retirement are the same for suffragan bishops as for diocesan bishops¹.

The entitlement to retirement pensions, and to pensions for widows and dependants, is on the same basis as for diocesan bishops²; the full annual rate of retirement pension in the case of a suffragan bishop is, however, £900³.

1 Bishops (Retirement) Measure 1951, s 11: see PARAS 485-487 ante.

2 See PARA 484 ante.

3 Clergy Pensions Measure 1961, s 1, Sch. 1, Part I.

UPDATE

495 Retirement and pension rights

TEXT AND NOTE 1--Now age limit of 70, see provisions relating to diocesan bishops ante. In case of suffragan bishop, diocesan bishop may authorise continuance in office: Ecclesiastical Offices (Age Limit) Measure 1975 s 3; Bishops (Retirement) Measure 1986 s 11(1).

NOTE 1--1951 Measure repealed: 1986 Measure Schedule.

TEXT AND NOTE 3--Clergy Pensions Measure 1961 Sch 1 replaced: Church of England Pensions Regulations 1988, SI 1988/2256.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/496. The office of archdeacon.

(iv) Archdeacons

496. The office of archdeacon.

An archdeacon is an ordained minister, having statutory jurisdiction under the Crown and next after the bishop over a portion of a diocese, called an archdeaconry, in matters ecclesiastical¹. Originally the office was, as the name ('chief deacon') implies, limited to deacons², but now a clergyman to hold it must not only be a priest, but must have been for six years complete in priest's orders³. Thus, he must be thirty years of age at least⁴.

There seems to be a difference of opinion as to whether a dean or archdeacon is of the higher rank⁵. It seems clear that an archdeacon is inferior in rank to the chancellor of the diocese. The precedence is given to the latter by all writers because the chancellor represents the person of the bishop, and has the greater jurisdiction⁶.

An archdeacon is by custom styled 'the Venerable'. His office is recognised as one of freehold tenure⁷. He is a corporation sole⁸. It is doubtful whether an archdeacon as such has a cure of souls⁹.

1 See the Ecclesiastical Commissioners Act 1836, preamble, s 19; Godolphin's Repertorium Canonicum 60; 1 Bl Com (14th Edn) 383.

2 See Legatine Canons, made at London A.D. 1126-1127; Johnson's Ecclesiastical Laws: 'that none be promoted to an archdeaconry but a deacon'.

3 Ecclesiastical Commissioners Act 1840, s 27; Revised Canons Ecclesiastical, Canon C22 para 1.

4 As to the age requirements for ordination, see PARA 654 post.

5 A dean is styled archpresbyter; therefore some authorities say that he is superior to an archdeacon in the same way as a priest is superior to a deacon: Stephens, Laws relating to the Clergy 45. It has also been stated that a dean and chapter is of higher rank than an archdeacon: *Parham v Templar* (1821) 3 Phillim 223 at 243, per Sir John Nicholl. However, Ayliffe says an archdeacon of common right within his own precinct is the next great person in point of dignity after the bishop and his chancellor, saving the right of the dean which belongs to him in the cathedral church: Ayl Par 95. Also a dean is a dignitary (see PARA 435 ante), whereas it has been doubted whether an archdeacon is one. Watson says he is: Watson, Clergyman's Law (4th Edn) 9; and see Godolphin's Repertorium Canonicum 60 (but see also App. 5; contra *Boughton v Gousley* (1599) Cro Eliz 663). See also *Dean and Chapter of Rochester v Pierce* (1808) 1 Camp 466. For the purposes of the Church Dignitaries (Retirement) Measure 1949 (see PARA 502 post) an archdeacon is a dignitary (see s 12). As to deans, see PARA 640 post.

6 Godolphin's Repertorium Canonicum, App. 5; Ayl Par 95.

7 *Ballard v Gerard* (1702) 12 Mod Rep 608. See also Ayl Par 96, where it is stated that he cannot be removed at the bishop's beck and pleasure. Cf. also the wording of the Church Dignitaries (Retirement) Measure 1949, s 12.

8 1 Bl Com (14th Edn) 470; *Tufnell v Constable* (1838) 7 Ad & El 798.

9 See PARA 640 note 4 post, where the position of deans and canons is discussed. See, however, Phillimore, Ecclesiastical Law (2nd Edn) 382, where it is stated that bishops have the cure of their whole dioceses and archdeacons do in many particulars share with them in their spiritual cures.

UPDATE

496 The office of archdeacon

TEXT AND NOTES--As to the designation of archdeacon emeritus, see PARA 502.

NOTE 1--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 3--For 'priest's orders' read 'holy orders and be in priest's orders at the time of the appointment': 1840 Act s 27; Church of England (Miscellaneous Provisions) Measure 1995 s 5(b).

TEXT AND NOTE 4--Maximum age limit for appointment now 69: Ecclesiastical Offices (Age Limit) Measure 1975 s 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/497. Appointment of archdeacon.

497. Appointment of archdeacon.

An archdeacon is usually appointed by the bishop, who prefers him by collation. If, however, an archdeaconry is in the gift of a layman, the patron presents to the bishop¹, who institutes in the same manner as to another benefice, and the dean and chapter induct him by placing him, after some ceremonies, in a stall of the cathedral church to which he belongs, whereby he is said to have locum in choro². Every archdeacon must before collation make and subscribe the declaration of assent and the declaration against simony and take the oath of allegiance³ and the oath of obedience to his bishop⁴.

1 *Sale v Bishop of Coventry and Lichfield* (1590) 1 And 241, sub nom. *Smallwood v Bishop of Coventry etc and Marsh* (1590) 1 Leon 205.

2 Watson, *Clergyman's Law* (4th Edn) 302; Godolphin's *Repertorium Canonicum* 62; *Sale v Bishop of Coventry and Lichfield* (1590) 1 And 241, sub nom. *Smallwood v Bishop of Coventry etc and Marsh* (1590) 1 Leon 205.

3 Clerical Subscription Act 1865, s 5; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 1; Revised Canons Ecclesiastical, Canon C15 para 1 (1), (5) (substituted by Amending Canon No. 4), Canon C16 para 1; see PARA 464 ante, 660 post. The oath of allegiance may be dispensed with in the case of an overseas clergyman who is not a citizen of the United Kingdom and colonies: see the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 2, and PARA 669 post.

4 Revised Canons Ecclesiastical, Canon C14 para 3.

UPDATE

497 Appointment of archdeacon

TEXT AND NOTE 3--The declaration against simony is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1, Schedule; amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/498. Archdeacon's jurisdiction.

498. Archdeacon's jurisdiction.

An archdeaconry is a legal division of a diocese for administrative purposes. The dioceses in England are usually divided into two, three or four archdeaconries, although an archdeaconry may comprise the whole diocese, or any part of one. Provision may be made by a pastoral scheme or a pastoral order¹ for creating, altering or dissolving an archdeaconry, for naming any new archdeaconry so created and for altering the name of any archdeaconry². Within their respective archdeaconries all archdeacons throughout England have and exercise full and equal jurisdiction³.

The archdeacon's jurisdiction is described as an ordinary jurisdiction⁴ and is exercised either by himself in person or by an official or commissary to whom he has formally committed authority in that behalf⁵.

1 See PARA 856 et seq post.

2 Pastoral Measure 1968, ss 18, 38 (d). A provision of a pastoral scheme (but not of a pastoral order) which dissolves an archdeaconry may be brought into operation without the assent of the archdeacon and without waiting for a vacancy in the archdeaconry (ss. 24 (1), 38 proviso), but if the archdeaconry is not already vacant a prescribed period must elapse before the provision can come into operation (s. 24 (3)). Where an archdeaconry is dissolved by a pastoral scheme, and when in certain specified circumstances an archdeacon resigns his office by agreement with the pastoral committee, the archdeacon is entitled to compensation for any consequential loss suffered by him: s 25, Sch. 4; see PARA 888 post.

3 Ecclesiastical Commissioners Act 1836, s 19.

4 Revised Canons Ecclesiastical, Canon C22 para 2. For the meaning of 'ordinary', see PARA 458 ante, 1275 note 5 post. Archdeacons' courts were, however, abolished by the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (a), subject to savings in respect of the visitatorial powers of archdeacons (s. 83 (2) (e); see PARA 500 post) and the mode of appointment, office and duties of the official principal of an archdeacon (s. 83 (2) (f)), as to whom see PARA 1273 post. See also PARA 490 post.

5 Revised Canons Ecclesiastical, Canon C22 para 3; Ayl Par 161. See also PARAS 500, 1273 post.

UPDATE

498 Archdeacon's jurisdiction

TEXT AND NOTE 2--Consolidated in Pastoral Measure 1983; see ss 19, 37(1)(d); Team and Group Ministries Measure 1995 s 5.

NOTE 2--Now 1983 Measure ss 25(1), (3), 26(1), 37 proviso, Sch 4 (ss 25, 26 renumbered and s 37 proviso amended by the 1995 Measure ss 4, 5; 1983 Measure s 25(3) amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 8). 1983 Measure Sch 4 now has effect in relation to a deacon to whom the s 20(3A) (see PARA 870) applies as it has effect in relation to a vicar in a team ministry: s 26(2). It also applies in relation to a person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: s 41.

NOTE 4--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004. The 1963 Measure s 83(2) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/499. Archdeacon's functions.

499. Archdeacon's functions.

The archdeacon must, within his archdeaconry, carry out his duties under the bishop and assist him in his pastoral care and office, and particularly he must see that all who hold any ecclesiastical office within the archdeaconry perform their duties with diligence, and must bring to the bishop's attention what calls for correction or merits praise¹.

The archdeacon must hold yearly visitations² within his archdeaconry, save when inhibited by a superior Ordinary³. He must also survey in person or by the rural dean all churches, chancels and churchyards at least once in three years, and give direction for the amendment of all defects in their walls, fabric, ornaments and furniture⁴; in particular he is required to exercise the powers conferred upon him by the Inspection of Churches Measure 1955⁴. He has important functions and authority in relation to faculty jurisdiction⁵, and is a member of the diocesan advisory committee for the care of churches⁶.

It is the archdeacon's duty, either in person or by deputy, to examine and present candidates for ordination⁷ and, on receiving letters mandatory of the bishop, he must induct any priest who has been instituted to a benefice into possession of its temporalities⁸.

The archdeacon is an ex officio member of numerous bodies, including the diocesan synod⁹, the pastoral committee of the diocese¹⁰, and the parsonages board (if one is appointed for the diocese)¹¹. He may have to serve as a member of the Lower House of the convocation of the province¹², of the House of Clergy of the General Synod¹³ and of the diocesan board of patronage¹⁴.

In addition, the archdeacon has other functions under various enactments¹⁵, including such functions as the bishop may be specifically authorised to delegate to an archdeacon¹⁶.

1 Revised Canons Ecclesiastical, Canon C22 para 4.

2 As to the archdeacon's visitation, see PARA 500 post.

3 Revised Canons Ecclesiastical, Canon C22 para 5. As to such inhibition, see PARA 500 text to note 2 post.

4 Ibid Canon C22 para 5; Canon F18. As to the inspection of Churches Measure 1955, see PARA 1099 post.

5 See the Faculty Jurisdiction Measure 1964, ss 9, 10, 12, and PARA 1331 et seq post.

6 Ibid s 13: see PARA 523 post.

7 See the Book of Common Prayer, Form and Manner of Ordering of Priests; Revised Canons Ecclesiastical, Canon C7 (amended by Amending Canon No. 1); and PARA 657 et seq post.

8 Ibid Canon C22 para 5. As to induction, see Canon C11, and PARAS 849, 850 post.

9 Church Representation Rules, r 24 (2) (a) (iii), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 505 post.

10 Pastoral Measure 1968, s 1 (2), Sch. 1 para 3: see PARA 521 post.

11 Repair of Benefice Buildings Measure 1972, s 1 (4): see PARA 520 post.

12 See PARA 444 ante.

13 See PARAS 390, 416 ante.

14 Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (1) (v): see PARA 790 post.

15 He has eg the responsibility of convening and conducting an extraordinary meeting of a parochial church council or an extraordinary parochial church meeting under the Church Representation Rules, r 18 (2) (see PARA 657 post), and he has the chairmanship of the body of advisers constituted for the purpose of consultation by the bishop under the Benefices (Exercise of Rights of Presentation) Measure 1931, s s 2, 4 (1) (iii) (see PARA 818 post).

16 See the Pastoral Measure 1968, s. 85; Repair of Benefice Buildings Measure 1972, s 28; and PARA 473 ante.

UPDATE

499 Archdeacon's functions

TEXT--As to appointment of a deputy to discharge an archdeacon's functions, see Church of England (Miscellaneous Provisions) Measure 1983 s 9 (see PARA 499A).

TEXT AND NOTE 5--See *Re St Michael and All Angels, Great Torrington* [1985] Fam 81, [1985] 1 All ER 993 (archdeacons should be ready to intervene in faculty suits in order to assist diocesan chancellor).

TEXT AND NOTE 8--For 'letters mandatory' read 'directions': Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

NOTE 9--Rule 24(2)(a)(iii) now r 30(4)(a)(iii): SI 1994/3118.

NOTE 10--Consolidated in Pastoral Measure 1983; see s 1(2), Sch 1 para 3 (both repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

NOTE 14--Now the Patronage (Benefices) Measure 1986 Sch 3 para 1(1)(d).

NOTE 15--1931 Measure replaced by the 1986 Measure Pt II (ss 7-24: see PARA 818A), which does not provide for a body of advisers.

TEXT AND NOTE 16--Repealed: Church of England (Miscellaneous Provisions) Measure 1976 Schedule Pt II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/499A. Delegation of archdeacon's functions.

499A. Delegation of archdeacon's functions.

Where an archdeaconry is vacant or an archdeacon is unable by reason of illness or absence to carry out any or all of his functions, the bishop of the diocese in which the archdeaconry is may appoint by an instrument under his hand a person in priest's orders to perform any or all of the archdeacon's functions for a period specified in the instrument¹. This may be done by appointing two or more qualified persons and dividing the functions between them².

¹ Church of England (Miscellaneous Provisions) Measure 1983 s 9(1). This does not affect the bishop's powers under the Faculty Jurisdiction Measure 1964 s 9(2) (see PARA 1319) or the Incumbents (Vacation of Benefices) Measure 1977 s 2(2) (see PARA 733A.2): 1983 Measure s 9(4).

² Ibid s 9(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/500. Archdeacon's visitation.

500. Archdeacon's visitation.

An archdeacon has the right to visit, at times and places limited by law or custom, the archdeaconry committed to his charge in a more solemn manner, and in the visitation to perform all acts by law or custom assigned to his charge in that behalf for the edifying and well-governing of Christ's flock, that means may be taken thereby for the supply of such things as are lacking and the correction of such things as are amiss¹. Except when inhibited by a superior Ordinary² the archdeacon is required to hold yearly visitations within his archdeaconry³.

The annual visitation is usually held soon after the end of April, at which time churchwardens are to be admitted and presentments received⁴. The archdeacon is expected on that occasion to deliver an address (called a charge)⁵, and it seems that he has power also to require one of the clergy to preach a visitation sermon⁶. He has power to cite the clergy to attend, but not the laity, except the churchwardens and perhaps sidesmen⁷. An archdeacon may visit by his official or commissary if he himself is hindered from performing the visitation⁸.

The archdeacon's visitation is for the benefit of the parish at large and, among others, of the churchwardens themselves; it may, however, be held by grouping a large number of parishes together and holding the visitation for all at some one parish church⁹.

Fees are no longer payable at an archidiaconal visitation¹⁰.

1 Revised Canons Ecclesiastical. Canon G5 para 1. For the meaning and objects of visitation, see PARA 490 ante.

2 Ie during the time of an episcopal or archiepiscopal visitation, when the archdeacon's jurisdiction is suspended: *ibid* Canon G5 para 2; see also *R v Sowter* [1901] 1 KB 396, CA, and PARA 490 ante.

3 Revised Canons Ecclesiastical, Canon C22 para 5.

4 As to the admission of churchwardens, see PARA 546 post. As to presentments, see *ibid* Canon G6, and PARA 491 ante. When he summons his visitation the archdeacon must deliver or cause to be delivered to the minister and churchwardens of every parish, or to some of them, such articles of inquiry as he requires the minister and churchwardens to ground their presentments upon (Canon G6 para 1), together with the form of declaration which must be made immediately before any such presentment (Canon G6 para 2).

5 Ayl Par 515.

6 See *Huntley's Case* (1626) 4 Burn's Ecclesiastical Law 27.

7 *Anon* (1608) Noy 123.

8 Ayl Par 161; and see Revised Canons Ecclesiastical, Canon C22 para 3.

9 *Shephard v Payne* (1862) 12 CBNS 414 at 434, 435; *affd.* (1864) 16 CBNS 132, Ex Ch, approving the practice of centuries in Essex.

10 See PARA 491 note 10 ante.

UPDATE

500 Archdeacon's visitation

NOTES--The registrar of an archdeacon and, by virtue of the Ecclesiastical Judges and Legal Officers Measure 1976 s 7(2), the registrar of a diocese have no duty to attend at an archdeacon's visitation: Church of England (Miscellaneous Provisions) Measure 1992 s 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(iv) Archdeacons/501. Emoluments.

501. Emoluments.

The estates which formerly belonged to archdeaconries became vested in the Ecclesiastical Commissioners, whose powers and functions subsequently passed to the Church Commissioners¹.

The Church Commissioners have power at their discretion to pay out of their general fund such sum or sums as they think fit in augmentation of the income of any archdeaconry in either province, subject to the limitation that no such payment may be made so as to increase the total augmentation in any one financial year of the commissioners out of that fund above £400 or such other sum as may have been fixed by resolution of the Church Assembly or the General Synod².

Archdeacons formerly had the benefit of special statutory concessions in regard to the holding of offices in plurality³. They are now, however, subject to the general provisions which prohibit (1) the holding of benefices in plurality except in pursuance of a pastoral scheme or order⁴, and (2) the holding of a cathedral preferment with a benefice, or with two or more benefices authorised to be held in plurality by a pastoral scheme or order, unless the cathedral statutes so provide⁵.

¹ See generally para 1233 post. As to the Ecclesiastical Commissioners and the Church Commissioners, see PARAS 362, 363 ante.

² Archdeaconries (Augmentation) Measure 1953, s 1; Synodical Government Measure 1969, s 2 (2). By a resolution of the Church Assembly in 1968 the limit was raised to £1,000. The profits of an archdeaconry during vacation of the office go to the successor: Tithe Act 1536, ss 1-3. As to an archdeacon's pension rights, see PARA 502 post.

³ Pluralities Act 1838, s 2 proviso (repealed).

⁴ Pastoral Measure 1968, s 88 (1): see PARA 853 et seq post. For the meaning of 'benefice', see s 88 (7), and PARA 768 note 1 post.

⁵ Ibid s 88 (2): see PARA 853 post. For the meaning of 'cathedral preferment', see s 88 (7), and PARA 641 note 2 post, and as to cathedral statutes, see s 88 (7), and PARA 641 et seq post.

UPDATE

501 Emoluments

TEXT AND NOTE 2--Repealed: Endowments and Glebe Measure 1976 Sch 8. The Church Commissioners may from time to time pay out of their general fund such sums as they think fit towards the stipend of any archdeacon: s 6(1).

NOTES 4, 5--Consolidated in Pastoral Measure 1983; see s 85(1), (2), (5).

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502. Retirement and pension rights.

The office of archdeacon may become vacant by death, deprivation¹, resignation, or retirement². In common with other dignitaries archdeacons are subject to special provisions concerning retirement on the ground of inability through age or infirmity (whether bodily or mental) to discharge adequately the duties of the office³.

Entitlement to retirement pensions, and to pensions for widows and dependants, is determined in the same way as for the clergy generally⁴. The full annual rate of retirement pension for an archdeacon is £600⁵.

1 See the Ecclesiastical Jurisdiction Measure 1963, ss 49 (1), 55; Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2; and PARAS 1373, 1374 post.

2 There is no compulsory retirement age, but seventy is the retirement age for the purposes of the Clergy Pensions Measure 1961: see s 46 (1).

3 See the Church Dignitaries (Retirement) Measure 1949, ss 1, 2, 12, and PARA 649 et seq post.

4 See the Clergy Pensions Measure 1961, and PARA 738 et seq post. As to pensions payable in cases of retirement on the ground of incapacity, see the Church Dignitaries (Retirement) Measure 1949, s 3, and PARA 652 post.

5 Clergy Pensions Measure 1961, s 1, Sch 1, Part I para 1.

UPDATE

502 Retirement and pension rights

TEXT AND NOTES--The bishop of a diocese may confer the designation of archdeacon emeritus on a person who retires immediately after holding the office of archdeacon: Church of England (Miscellaneous Provisions) Measure 1995 s 3.

NOTE 1--1963 Measure s 55 repealed: Clergy Discipline Measure 2003. See now 2003 Measure s 24; and PARA 1350B.

TEXT AND NOTE 2--There is now a compulsory retirement age of 70: Ecclesiastical Offices (Age Limit) Measure 1975 s 1. The diocesan bishop may authorise continuance in office for up to one year: s 3; Bishops (Retirement) Measure 1986 s 11(1). The retirement age will not apply to those already holding office on 1 January 1976: 1975 Measure s 1(4). For the purposes of assessing pension payments, the retiring age is now sixty-five years: Church of England Pensions Regulations 1988, SI 1988/2256.

TEXT AND NOTES 4, 5--Clergy Pensions Measure 1961 Sch 1 replaced: 1988 Regulations, SI 1988/2256.

NOTE 13--Where an archdeacon wishes to resign, it is not necessary to proceed by way of a deed, but any such resignation must be in writing, duly signed and witnessed and sent to the diocesan bishop concerned: Church of England (Miscellaneous Provisions) Measure 1995 s 4.

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(v) Diocesan Synods, Boards and Committees

A. DIOCESAN SYNODS

(A) CONSTITUTION AND MEMBERSHIP

503. Constitution of diocesan synods.

In 1970, as part of the new system created by the Synodical Government Measure 1969¹, diocesan synods were constituted for all dioceses², and thereupon the diocesan conferences which had previously existed were dissolved and all their functions were transferred to the diocesan synods³.

A diocesan synod consists of three authorities: the bishop (who is president of the synod)⁴, a House of Clergy and a House of Laity⁵. The total number of members must be not less than 150 and not more than 270⁶.

Provisions relating to membership of the diocesan synod, including the composition of the House of Clergy and the House of Laity and the procedure for the election of members to them, are contained in the Church Representation Rules⁷. If it appears to the diocesan synod that those provisions ought to be varied to meet the special circumstances of the diocese and to secure better representation of clergy or laity, or both, it may make a scheme for such variation⁸. Every such scheme requires the assent of the bishop and of a two-thirds majority of the membership of each House of the synod present and voting⁹ and it must thereafter be laid before a session of the General Synod¹⁰. If not annulled by resolution of the General Synod the scheme will come into operation on the prescribed or specified date, and the relevant provisions of the Church Representation Rules will then have effect subject to the scheme¹⁰.

The registrar of the diocese is the registrar of the diocesan synod, and may appoint a deputy¹¹.

1 See PARAS 385, 386 ante.

2 Synodical Government Measure 1969, s 4 (1). As to the application of provisions of the Measure to the Isle of Man and the Channel Islands, see s 9 (3)-(5), and PARA 388 ante. See also the Synodical Government (Channel Islands) Order 1970, S.I. 1970 No. 1117, whereby the Synodical Government Measure 1969, s 4, applies to the Channel Islands so far as may be necessary to secure that the functions of the diocesan synod of Winchester are exercisable with respect to matters concerning the Church of England in the Channel Islands.

3 Ibid s 4 (7). References in any Measure or instrument to diocesan conferences are now to be construed as references to diocesan synods: s 4 (7). The bishop is not prevented by this enactment from summoning a conference of persons appearing to him to be representative of the clergy and laity of the diocese on such occasions and for such purposes as he thinks fit: s 4 (7) proviso. Under transitional provisions (see s 8) the dissolution of the diocesan conference and the transfer of functions are not to affect the validity of previous action by the diocesan conference or the continuance in being of any other diocesan body, and provision is made for the continuing force and effect, where appropriate, of things given, made or done by the diocesan conference: Sch. 4 para 3 (1).

4 During a vacancy in the see the bishop's functions as one of the authorities of the diocesan synod are exercisable by such person in episcopal orders as the archbishop of the province may appoint: Church Representation Rules, r 43 (7), contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865).

5 Church Representation Rules, r 24 (1).

6 Ibid r 25 (6): see PARA 509 post.

7 See ibid Part IV (rr. 24-28) (amended by S.I. 1973 No. 1865). As to the Church Representation Rules, see PARA 389 ante.

8 Ibid r 27 (1) (amended by S.I. 1973 No. 1865).

9 Ibid rr 21 (2), 27 (2). Copies of the proposed scheme must be sent to members of the diocesan synod at least fourteen days before the session at which they are to be considered: rr 21 (2), 27 (2).

10 Ibid rr 21 (3), 27 (2).

11 Ibid r 28 (2). As to the registrar, see PARA 1281 post.

UPDATE

503 Constitution of diocesan synods

TEXT--No person, other than the chancellor of a diocese, is entitled to be a member of more than one diocesan synod at the same time: r 30(7); SI 1980/178, SI 1994/3118.

NOTE 4--Rule 43 now r 53; SI 1994/3118. Now the bishop's functions as president of the diocesan synod: r 53(7); SI 1980/178.

TEXT AND NOTE 5--Diocesan synod now consists of a house of bishops, a house of clergy and a house of laity: r 30(1); SI 1980/178, SI 1994/3118. The members of the house of bishops consist of the bishop of the diocese, every suffragan bishop of the diocese and such other person or persons in episcopal orders working in the diocese, as the bishop of the diocese, with the concurrence of the archbishop of the province, may nominate: r 30(2); SI 1980/178. The bishop of the diocese is the president of the diocesan synod: r 30(3); SI 1980/178.

NOTES 8-10--Rules 21, 27 now renumbered as rr 26, 33: SI 1994/3118.

TEXT AND NOTE 9--The assent of the house of bishops is now required: rr 26(2), 33(2); SI 1980/178.

TEXT AND NOTE 10--Now a scheme approved by the diocesan synod must be laid before the General Synod; if a member of the General Synod gives notice in accordance with the Standing Orders of that Synod that he wishes such a scheme to be debated, the scheme will not come into operation unless it is approved by the General Synod. If no such notice is given, or if notice is given and the scheme is approved by the General Synod, it will come into operation on the day after the end of the group of sessions during which it was laid before, or approved by, the General Synod or on such later date as may be specified in the scheme: rr 26(3)-(5), 33(2); SI 1980/178.

NOTE 11--Rule 28(2) renumbered as r 34(3): SI 1980/178, SI 1994/3118.

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504. New dioceses.

The General Synod has power to make provision, upon the foundation of a new bishopric, for the constitution or reconstitution of the diocesan synod of any new diocese¹ concerned, and for any matters incidental to it or consequential upon it². In exercising this power the General Synod may dissolve, with a view to its reconstitution, the diocesan synod of any diocese the area of which is altered by the foundation of the new bishopric³, and may sanction a scheme made or approved by the bishop of a new diocese concerned for the original constitution or the reconstitution of its diocesan synod⁴.

1 'New diocese' includes both any diocese constituted upon, and any diocese the area of which is altered by, the foundation of a new bishopric: New Dioceses (Transitional Provisions) Measure 1927, s 3 (1).

2 Ibid s 1 (1); Synodical Government Measure 1969, ss 2 (2), 4 (7). As to the foundation of new bishoprics, see PARA 454 ante. The New Dioceses (Transitional Provisions) Measure 1927 does not apply to the Channel Islands or the Isle of Man: s 5.

3 Ibid s 1 (2) (ii); Synodical Government Measure 1969, s 4 (7).

4 New Dioceses (Transitional Provisions) Measure 1927, s 1 (2) (iv); Synodical Government Measure 1969, s 4 (7). The Measure of 1927 (as originally enacted) also empowered the Church Assembly, for the purposes only of the original constitution or the reconstitution of the diocesan conference of a new diocese concerned, to modify the provisions of the Diocesan Conferences Regulations 1922 as to the election of representatives and other matters relating to diocesan conferences: s 1 (2) (iii). Whether this would enable the General Synod to modify the corresponding provisions of the Church Representation Rules relating to diocesan synods seems open to doubt.

UPDATE

504 New dioceses

TEXT AND NOTES--The New Dioceses (Transitional Provisions) Measure 1927 has been repealed.

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505. Membership of the House of Clergy.

The House of Clergy of a diocesan synod consists of ex officio members, elected members and co-opted members, with the possible addition of some members nominated by the bishop.

The ex officio members are (1) the suffragan bishop or bishops and any assistant bishop or bishops nominated by the bishop of the diocese¹; (2) the dean or provost of the cathedral (including, in appropriate dioceses, the Dean of Westminster, the Dean of Windsor and the Deans of Jersey and Guernsey)²; (3) the archdeacons³; (4) the proctors elected from the diocese or from any university in the diocese⁴ to the Lower House of the convocation of the province, excluding the registrar of the diocese (if so elected)⁵; (5) any other member of that House, being the person chosen by and from among the clerical members of religious communities in the province, who resides in the diocese⁶; (6) the chancellor of the diocese (if in holy orders)⁷; and (7) the chairman of the diocesan board of finance (if in holy orders)⁸.

The elected members are those elected by the Houses of Clergy of the deanery synods in the diocese in accordance with the relevant provisions of the Church Representation Rules⁹.

The co-opted members are those clerks in holy orders who are co-opted by the House of Clergy of the diocesan synod¹⁰. They must not exceed five in number¹⁰.

The bishop of the diocese may nominate ten additional members of the diocesan synod, and any clergymen so nominated will be members of the House of Clergy¹¹.

1 Church Representation Rules, r 24 (2) (a) (i), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Church Representation Rules, r 24 (2) (a) (ii).

3 Ibid r 24 (2) (a) (iii).

4 For this purpose the University of London is treated as being wholly in the diocese of London: ibid r 24 (2) (a) (iv) (amended by S.I. 1973 No. 1865).

5 Ibid r 24 (2) (a) (iv) (amended by S.I. 1973 No. 1865). As to proctors elected from dioceses and universities, see PARAS 446, 447 ante.

6 Ibid r 24 (2) (a) (v) (added by S.I. 1973 No. 1865): see PARA 444 ante.

7 Ibid r 24 (2) (a) (vi) (amended by S.I. 1973 No. 1865). 'Chancellor of the diocese' means the judge of the consistory or commissary court of the bishop of the diocese: Interpretation Measure 1925, s 3. As to the chancellor, see PARA 1275 et seq post.

8 Church Representation Rules, r 24 (2) (a) (vii) (amended by S.I. 1973 No. 1865). As to this board, see PARA 517 et seq post.

9 Ibid r 24 (2) (b). See further PARA 508 et seq post.

10 Ibid r 24 (2) (c).

11 Ibid r 24 (4).

UPDATE

505 Membership of the House of Clergy

NOTES--Rule 24(2), (4) now r 30(4), (6); SI 1994/3118. The registrar of the diocese and any deputy registrar of the diocesan synod are disqualified from standing for election to the diocesan synod or from being a nominated, co-opted or ex officio member of that synod: r 30(8); SI 1994/3118.

TEXT AND NOTE 1--Head (1) now any person or persons in episcopal orders nominated by the bishop of the diocese, other than a suffragan bishop or a person nominated under r 30(2) (see PARA 503): r 30(4)(a)(i); SI 1980/178.

TEXT AND NOTE 5--Registrar of the diocese (if so elected) no longer excluded: r 30(4)(a)(iv); SI 1994/3118.

NOTE 7--No person is entitled to be a member of more than one diocesan synod at the same time except (a) the chancellor of the diocese, (b) a suffragan bishop appointed to act as a provincial episcopal visitor for the purposes of the Episcopal Ministry Act of Synod 1993 who, in addition to membership of the diocesan synod of the diocese of which he is suffragan, may be invited by the bishop of the diocese where he resides to be a member of that diocesan synod in accordance with r 30(2) or (4)(a)(i) provided that he must exercise his vote on a matter referred by the General Synod under art 8 of the constitution only in the diocesan synod of the diocese of which he is suffragan: r 30(7); SI 1995/3243.

TEXT AND NOTE 8--The chairman of the diocesan advisory committee (see PARA 523) is also included: r 30(4)(a)(vii); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7.

TEXT AND NOTE 11--As to nominated members, see further r 30(6); SI 1984/1039.

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506. Membership of the House of Laity.

The House of Laity of a diocesan synod consists of ex officio members, elected members and co-opted members with the possible addition of some members nominated by the bishop.

The ex officio members are (1) the chancellor of the diocese (if not in holy orders)¹; (2) the chairman of the diocesan board of finance (if not in holy orders)²; (3) the members elected from the diocese to the House of Laity of the General Synod, excluding the registrar of the diocese (if so elected)³; (4) any other member of that House, being the person chosen by and from among the lay members of religious communities in the province, who resides in the diocese⁴.

The elected members are those who are elected by the Houses of Laity of the deanery synods in the diocese in accordance with the relevant provisions of the Church Representation Rules⁵.

The co-opted members are those persons, being actual communicant members of the Church of England⁶ of eighteen years or upwards, who are co-opted by the House of Laity of the diocesan synod⁷. They must not exceed five in number⁷.

The bishop of the diocese may nominate ten additional members of the diocesan synod, and any lay persons so nominated will be members of the House of Laity⁸.

1 Church Representation Rules, r 24 (3) (a) (i), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 505 note 7 ante.

2 Church Representation Rules, r 24 (3) (a) (ii). As to this board, see PARAS 517, 518 post.

3 Ibid r 24 (3) (a) (iii).

4 Ibid r 24 (3) (a) (iv) (added by S.I. 1973 No. 1865): see PARA 444 ante. For the meaning of 'lay', see r 44 (2), and PARA 591 note 5 post.

5 Ibid r 24 (3) (b): see PARA 508 et seq post.

6 For the meaning of 'actual communicant member of the Church of England', see ibid r 44 (1) (amended by S.I. 1973 No. 1865), and PARA 420 note 1 ante.

7 Ibid r 24 (3) (c).

8 Ibid r 24 (4).

UPDATE

506 Membership of the House of Laity

NOTES--Rule 24(3), (4) now r 30(5), (6); SI 1994/3118. The registrar of the diocese and any deputy registrar of the diocesan synod are disqualified from standing for election to the diocesan synod or from being a nominated, co-opted or ex officio member of that synod: r 30(8); SI 1994/3118.

TEXT AND NOTE 2--The chairman of the diocesan advisory committee (see PARA 523) is also included: r 30(5)(a)(ii); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7.

TEXT AND NOTE 3--Registrar of the diocese (if so elected) no longer excluded: r 30(5)(a)(iii); SI 1994/3118.

TEXT AND NOTE 4--Now being an ex officio or co-opted member of the House of Laity or a person so chosen: r 30(5)(a)(iv); SI 1984/1039.

TEXT AND NOTE 7--For 'actual communicant members of the Church of England' read 'actual communicants': r 30(5)(c); SI 1994/3118 (see PARA 420).

TEXT AND NOTE 8--As to nominated members, see further r 30(6); SI 1984/1039.

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507. Period of membership of diocesan synod.

Elected members of the Houses of Clergy and Laity normally hold office for a term of three years beginning with 1st September next following their election¹, but a person elected to fill a casual vacancy holds office only for the unexpired portion of the term of office of the person in whose place he is elected².

Where a member of a diocesan synod elected by the House of Clergy of a deanery synod ceases to be qualified for election by that House, then, unless he continues to work or reside in the diocese, his seat will forthwith be vacated³. Where a lay member of a diocesan synod elected by the House of Laity of a deanery synod ceases to have the qualification of entry on the roll of any parish in that deanery or (in appropriate cases) of being declared a habitual worshipper at the cathedral church of the diocese⁴, his seat is forthwith vacated⁵, but this provision will not apply to a member whose name is entered on the roll of any other parish in the diocese or who, being declared a habitual worshipper at the cathedral, is declared by the dean to be associated with a deanery in the diocese⁶.

A person is not deemed to vacate his seat as an elected member by reason only of the fact that subsequently to his election he has become a member of the synod ex officio⁷.

A member of a diocesan synod may resign his membership by written notice to the secretary of the synod⁸.

1 Church Representation Rules, r 25 (1), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Church Representation Rules, r 39 (9) (amended by S.I. 1973 No. 1865).

3 Ibid r 37 (1) (b), (3) (amended by S.I. 1973 No. 1865). See also PARA 510 post.

4 See ibid r 22.

5 Ibid r 37 (1) (c) (amended by S.I. 1973 No. 1865). See also PARA 510 post.

6 Ibid r 37 (2) (added by S.I. 1973 No. 1865).

7 Ibid r 38 (amended by S.I. 1973 No. 1865).

8 Ibid r 40 (substituted by S.I. 1973 No. 1865). The resignation takes effect on the date specified in the notice or, if no date is so specified, on the receipt of the notice by the secretary: r 40 (substituted by S.I. 1973 No. 1865). It seems doubtful whether this rule is applicable to ex officio members.

UPDATE

507 Period of membership of diocesan synod

TEXT AND NOTES--Rules 37-40 now rr 46-49; SI 1994/3118. Where any member of a diocesan synod has his election declared void under r 45 (para 426), his seat must forthwith be vacated: r 46(1)(f); SI 1989/2094.

TEXT AND NOTE 1--For September, now read August: r 31(1); SI 1981/1650; 1994/3118.

TEXT AND NOTE 3--In this case, his seat will not be vacated if, before the vacancy occurs, the clerical members of the standing committee of the deanery synod so resolve: r 46(3); SI 1984/1039.

NOTE 3--Church Representation Rules r 46(1)(b) amended: SI 2004/1889.

NOTE 5--Church Representation Rules r 46(1)(c) amended: SI 2004/1889.

TEXT AND NOTE 6--Now if such a person's name is entered on the roll of any other parish or if he is declared to be a habitual worshipper at the cathedral church of the diocese, his seat will not be vacated if, before the vacancy occurs, the lay members of the standing committee of the deanery synod so resolve: r 46(4) (amended by SI 1984/1039, SI 2004/1889).

NOTE 6--Church Representation Rules r 46(2) amended: SI 2004/1889.

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(B) ELECTION OF MEMBERS

508. Time of elections.

Elections of members of the diocesan synod by the Houses of Clergy and Laity of the deanery synods must take place every three years¹. They must be carried out during such period between 1st June and 31st July (both inclusive) as are fixed by the diocesan bishop². The bishop has power, however, to extend or alter the time for holding any election, so far as may be necessary for the purpose of giving effect to the intention of the Church Representation Rules³.

1 Church Representation Rules, r 25 (1), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 26 (1).

3 Ibid r 43 (1) (c).

UPDATE

508 Time of elections

NOTE 1--Rule 25(1) now r 31(1); SI 1994/3118.

TEXT AND NOTE 2--Rule 26(1) now r 32(1); SI 1994/3118. Period of dates of election now to be fixed by the diocesan bishop and communicated to the secretaries of the deanery synods, and elections are to be completed by 15 July: r 32(1); SI 1989/2094.

NOTE 5--Rule 43 now r 53; SI 1994/3118.

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509. Determination of numbers.

Not later than 31st December in the year preceding an election¹ the diocesan synod must determine the numbers of members to be elected by the Houses of the several deanery synods². At least two members must be elected by each House of every deanery synod³. Subject to that requirement the numbers must be related (1) in the case of elections by the Houses of Clergy, to the numbers of members of those Houses in the respective deanery synods⁴; and (2) in the case of elections by the Houses of Laity, to the total numbers of names on the rolls of the parishes in the respective deaneries⁵.

The diocesan synod must so exercise its powers as to secure that the number of members of the synod is not less than 150 and not more than 270⁶ and that the numbers of the two Houses are approximately equal⁷.

1 As to the times of elections, see PARA 508 ante.

2 Church Representation Rules, r 25 (4), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

3 Church Representation Rules, r 25 (4) proviso.

4 Ibid r 25 (4) (a). For the purposes of the diocesan synod's determination the secretary of every deanery synod must, not later than 1st July in the year preceding the election, certify to the secretary of the diocesan synod the number of members of the House of Clergy of the deanery synod: r 25 (5).

5 Ibid r 25 (4) (b) (amended by S.I. 1973 No. 1865). As to the electoral roll of parishes, see rr 1-4, and PARA 591 et seq post. Not later than 1st July in the year preceding the election the number of names on the roll of each parish must be certified to the secretary of the diocesan synod, the certificate being signed by the chairman, vice chairman, secretary or church electoral roll officer of the parochial church council: r 4 (1) (a) (amended by S.I. 1973 No. 1865).

6 The figures are inclusive of the maximum number of members who may be co-opted by each House or nominated by the bishop: r 25 (6) (amended by S.I. 1973 No. 1865). In the case of the diocese of London, for the first five elections after the passing of the Synodical Government Measure 1969 (on 25th July 1969) and the filling of casual vacancies among the persons then elected, 500 is substituted for 270: Church Representation Rules, r 25 (6) proviso (amended by S.I. 1973 No. 1865). Not later than 31st December in the year preceding the election the secretary of the diocesan synod must certify to the secretary of every deanery synod the numbers so determined for that deanery synod: r 25 (7).

7 Ibid r 25 (6).

UPDATE

509 Determination of numbers

NOTES--Rule 25(4)-(7) now r 31(6)-(9); SI 1994/3118.

NOTE 4--Now for the purposes of the diocesan synod's determination the secretary of every deanery synod must, not later than 1 June, certify to the secretary of the diocesan synod the number of members of the House of Clergy of the synod as at 30 April: r 31(7); SI 1994/3118.

NOTE 5--Rule 4 substituted (see PARA 595).

NOTE 6--Rule 31(8) proviso (as renumbered) omitted and r 31(8) amended accordingly: SI 1984/1039. For 'two houses' read 'Houses of Clergy and Laity', and for '150' read '100': Church Representation Rules r 31(8) (amended by Synodical Government (Amendment) Measure 2003 Schedule para 7, SI 1994/3118, and SI 2009/2129).

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510. Qualifications for election and for voting.

Any clerk in holy orders who is a member of the deanery synod or is working or residing in the deanery is qualified to be elected by the House of Clergy of a deanery synod, and the electors are the members of that House other than the co-opted members¹. No clerk may stand for election by more than one deanery synod².

Any lay person who is an actual communicant member of the Church of England³ of eighteen years or upwards and whose name is entered on the roll of any parish in the deanery, or who is a lay person declared by the dean to be a habitual worshipper at the cathedral church of the diocese⁴, and to be associated with the deanery, is qualified to be elected by the House of Laity of a deanery synod, and the electors are the members of that House other than the co-opted members⁵.

A person is not disqualified from being elected a member of the diocesan synod by the fact that he is also an ex officio members of it⁶.

1 Church Representation Rules, r 25 (2), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 25 (2) proviso.

3 For the meaning of 'actual communicant member of the Church of England', see *ibid* r 44 (1) (amended by S.I. 1973 No. 1865), and PARA 420 note 1 ante.

4 This includes Westminster Abbey and St George's Chapel, Windsor: *ibid* r 44 (3).

5 *Ibid* r 25 (3) (amended by S.I. 1973 No. 1865). As to the electoral rolls of parishes, see rr 1-4, and PARA 591 et seq post. A person whose name is entered on the rolls of two or more parishes must choose one of those parishes for the purpose of r 25 (3): r 25 (3) proviso; see r 1 (3) (substituted by S.I. 1973 No. 1865). For the meaning of 'lay', see r 44 (2), and PARA 591 note 5 post.

6 *Ibid* r 38 (amended by S.I. 1973 No. 1865).

UPDATE

510 Qualifications for election and voting

NOTES--Rule 25 now r 31; SI 1994/3118.

TEXT AND NOTE 1--Now any clerk in holy orders who is a member of the deanery synod is qualified to be elected by the House of Clergy of a deanery synod, and the electors are those whose names and addresses are in the register of clerical electors, being members of the House of Clergy, but not including persons co-opted to the deanery synod (see PARA 528): r 31(2); SI 1989/2094, SI 1994/3118.

The qualifying date for electors under r 31(2), (3) and when a casual vacancy is being filled is 6 am on the date on which the nomination papers are issued: r 31(4); SI 1989/2094. The register of clerical electors and the register of lay electors is open to inspection at the diocesan office and any errors and omissions in the list may be corrected until the close of nominations, after which no names may be added or removed until the declaration of the result of the election, those persons whose names

are entered in the register being the qualified electors entitled to vote in that election: r 31(5); SI 1989/2094.

TEXT AND NOTES 3-5--For 'eighteen' read 'sixteen': Church Representation Rules r 31(3) (amended by SI 2004/1889).

TEXT AND NOTE 3--Reference is now to an 'actual communicant' (see PARA 420): r 31(3); SI 1994/3118.

NOTE 4--Rule 44(3) renumbered as r 54(4): SI 1980/178, SI 1994/3118.

TEXT AND NOTE 5--The electors are now those whose names and addresses are in the register of clerical electors, being members of the House of Clergy, but not including persons co-opted to the deanery synod: r 31(3) (amended by SI 1989/2094, SI 1989/2095, SI 1994/3118). Rule 1(3) renumbered as r 1(4): SI 1994/3118; SI 1995/3243.

NOTE 6--Rule 38 now r 47; SI 1994/3118.

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511. Conduct of elections.

The presiding officers for the deaneries in each diocese are appointed by the bishop, and the expenses of elections must be paid out of diocesan funds¹.

Every candidate must be nominated and seconded by a qualified elector². If more candidates are nominated than there are seats to be filled, their names must be circulated on a voting paper to every qualified elector³. The voting paper is returnable to the presiding officer within such period (not being less than fourteen days) as he specifies⁴. Only one vote may be given to any one candidate, and no elector may give more votes than there are seats to be filled⁴. Where owing to an equality of votes an election is not decided, the decision between the persons for whom the equal number of votes have been cast must be taken by lot by the presiding officer⁵.

Not later than 1st September in each election year the presiding officer must send a return of the result of the election to the secretary of the diocesan synod, and a statement of the result to every candidate⁶.

In any case in which there has been no valid election the bishop may direct a fresh election to be held, and may give such directions in connection with it as he may think necessary⁷.

Elections to fill casual vacancies are conducted in the same manner as ordinary elections⁸.

1 Church Representation Rules, r 26 (2), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 26 (3). As to who are qualified electors, see PARA 510 ante. The nomination must be accompanied by a statement, signed by the candidate, of his willingness to serve: r 26 (3). As to notice of the election and further as to nominations, see r 26 (3), App. I, ss 5, 6 (amended by S.I. 1973 No. 1865).

3 Ibid r 26 (4). For the form of voting paper, see App. I, s 7.

4 Ibid r 26 (5).

5 Ibid r 26 (6).

6 Ibid r 26 (7) (amended by S.I. 1973 No. 1865).

7 Ibid r 43 (1) (d). As to other powers of the bishop, including his power to modify the procedure laid down by the rules, see PARA 389 ante.

8 Ibid r 39 (2), (3). As to casual vacancies, see PARA 513 post.

UPDATE

511 Conduct of elections

TEXT AND NOTES--Rule 26 now r 32 (amended by SI 1994/3118). In every diocese, there must be a diocesan electoral registration officer appointed by the bishop's council and standing committee of the diocesan synod. He must record the names and addresses of all members of the House of Clergy and House of Laity of the deanery synods in two registers, ie the register of clerical electors and the register of lay electors. The members co-opted to the house must be listed separately in the appropriate register: r

29(1) (amended by SI 1989/2094, SI 1994/3118). The diocesan electoral registration officer must, not later than 21 days before the nomination papers are circulated, send a copy of the names and addresses of clerical electors and lay electors as recorded by him to the secretary of the deanery synod of which those electors are members and the secretary of the deanery synod must within seven days of receipt certify in writing to the electoral registration officer that the names and addresses are correct or notify him in writing of any necessary corrections: r 29(2) (amended by SI 1994/3118). The diocesan electoral registration officer must, not later than seven days before nomination papers are circulated, send a copy of the corrected names and addresses of electors to the appropriate presiding officer in the election: r 29(3) (amended by SI 1994/3118).

TEXT AND NOTE 1--No person may be appointed as a presiding officer for an election by a house of which he is a member: r 32(2) (amended by SI 1989/2094, SI 1994/3118).

The diocesan electoral registration officer (see TEXT AND NOTES) must furnish the presiding officer with the names and addresses of the qualified electors and the presiding officer must ensure that the persons qualified to nominate and vote in elections to the diocesan synod, and only such persons, are sent or given nomination and voting papers in respect of the election at the address entered against their names in the register of electors: r 32(3) (amended by SI 1989/2094).

NOTE 2--Rule 32(4) (as renumbered) amended by SI 1981/1650, SI 1989/2094, SI 1994/3118, SI 2009/2129. App 1 s 5 further amended by SI 1980/178, SI 1984/1039, SI 1989/2094, SI 1994/3118. App 1 s 6 further amended by SI 1989/2094, SI 1994/3118.

It is the duty of the presiding officer to scrutinise nomination papers as soon as they have been lodged and he must, without delay, inform the candidate concerned whether the nomination is valid; where the nomination is invalid, the presiding officer must give his reasons for so ruling and if, by the close of the nomination period, no valid nomination is received, the candidate must be excluded from the election: r 32(5)(a); SI 1994/3118. It is also the duty of the presiding officer to supply free of charge to a duly nominated candidate in the election one copy of the names and addresses of the qualified electors within seven days of receiving his written request: r 32(5)(b) (amended by SI 1994/3118).

TEXT AND NOTE 3--For the form of voting paper, see now App 1 ss 7, 8 (amended by SI 1980/178, SI 1984/1039, SI 1989/2094, SI 1994/3118, SI 2004/1889). The diocesan synod must, not later than 31 December in each year preceding any such election as is referred to in r 31, make a determination as to which form of voting paper is to be used by the deaneries in that election, and that determination will apply to any election to fill a casual vacancy which occurs during the next ensuing three years: r 32(6) (amended by SI 1980/178, SI 1984/1039).

TEXT AND NOTE 4--Now the voting paper marked and, on the reverse thereof, signed by the elector and with his full name written is returnable to the presiding officer within such period, not being less than fourteen days, as he specifies. No vote will be counted if given on a voting paper not in accordance with this provision: r 32(7) (amended by SI 1980/178, SI 1984/1039).

TEXT AND NOTE 5--This provision applies where voting papers in the form set out in App 1 s 7 have been used: r 32(8); SI 1980/178. Where voting papers in the form set out in App 1 s 8 (added by SI 1980/178, SI 1994/3118) are used, the election must be conducted under rules, with the necessary modifications, made by the General Synod under r 39(4) (see PARA 422) and for the time being in force: r 32(9) (amended by SI 1980/178).

TEXT AND NOTE 6--Rule 26(7) renumbered as r 32(10). For September, now read August:
r 32(10) (amended by SI 1981/1650, SI 1994/3118).

NOTE 7--Rule 43 now r 53 (amended by SI 1994/3118).

NOTE 8--Rule 48(3) (as renumbered) amended: SI 1989/2094, SI 1994/3118.

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512. Appeals.

A person aggrieved may appeal against the allowance or disallowance of a vote¹ or against the result of an election². Notice of the appeal must be given in writing to the bishop within the time prescribed³.

In each diocese the diocesan synod must constitute an electoral commission to whom the bishop must refer any appeal unless the parties agree to a settlement of their dispute⁴.

The commission must appoint three or more (being an odd number) of its members to decide the appeal⁵. All or the majority of the members so appointed must be laymen unless the question arises in connection with an election of members of the House of Clergy, when all or the majority must be clerks in holy orders⁶. These members are entitled to inspect all documents and papers relating to the subject matter of the appeal, and to be furnished with all information respecting it which they may require, and they must give the parties an opportunity of appearing before them in person or through a legal or other representative⁷. Their decision is final⁸.

1 Church Representation Rules, r 36 (1) (c), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Church Representation Rules, r 36 (1) (d) (amended by S.I. 1973 No. 1865). In this case an appellant will not be entitled to rely, as a ground of appeal, either (1) on an error in the electoral roll unless (i) either it has been determined that there has been such an error or the question is awaiting determination, and (ii) the error would or might be material to the result of the election; or (2) on the allowance or disallowance of a vote unless the allowance or disallowance would or might be so material: r 36 (3). As to appeals in respect of alleged errors in the electoral roll, see PARA 596 post.

3 Ibid r 36 (2). The time is normally fourteen days from the allowance or disallowance of a vote or from the announcement of the result of the election, as the case may be (r. 36 (2) (b), (c)), but the electoral commission (as to which see *infra*) may grant an extension of time (r. 36 (7)).

4 Ibid r 36 (5).

5 Ibid r 36 (5) (amended by S.I. 1973 No. 1865).

6 Ibid r 36 (5).

7 Ibid r 36 (6).

8 Ibid r 36 (5).

UPDATE

512 Appeals

NOTES--Rule 36 now r 43; SI 1994/3118.

TEXT AND NOTES 1, 2--Now r 44(1); SI 1989/2094, SI 1994/3118. As to the persons with a right of appeal under r 44, see r 44(2) (see PARA 426).

TEXT AND NOTES 4-6--Now in any appeal arising under r 44 except an appeal arising out of an election to the House of Laity of the General Synod, the chairman of the House of

Laity of the diocesan synod or the lay chairman of the deanery synod, as the case may be, must refer any appeal to the bishop's council and standing committee of the diocese, who must appoint three or a greater number, being an odd number, of their lay members to consider and decide the appeal: r 44(10); SI 1989/2094, SI 1994/3118. In any appeal arising under r 44 to the House of Clergy of the diocesan synod the chairman of the House of Clergy of the said synod must refer any appeal to the bishop's council and standing committee of the diocese which must appoint three or a greater odd number of their clerical members to consider and decide the appeal: r 44(11); SI 1989/2094. Where an appeal is pending in respect of an election to any synod, any person who was declared elected in accordance with r 33 (see PARA 503) but whose election is or may be affected by the appeal is deemed to be a member of that synod until the appeal is heard or disposed of: r 44(12); SI 1994/3118.

TEXT AND NOTE 7--The persons appointed to consider and decide the appeal have such powers: r 45(a), (b); SI 1989/2094.

NOTE 8--See now r 45(d) (see PARA 426).

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513. Casual vacancies.

Where a casual vacancy among the members of a diocesan synod elected by either House of a deanery synod occurs, the vacancy may be filled by the election by that House of a person qualified to be so elected, and a meeting of the members of that House who are electors may be held for that purpose¹. Subject to that, the election is to be conducted in the same manner as an ordinary election².

An election to fill a casual vacancy in either House of the diocesan synod must normally be held as soon as reasonably practicable and must be completed within six months from the occurrence of the vacancy³, but if the period for holding a general election to that House is due to begin within nine months of the vacancy, the vacancy is not to be filled unless the bishop otherwise directs⁴.

Any person elected to fill a casual vacancy will hold office only for the unexpired portion of the term of office of the person in whose place he is elected⁵.

1 Church Representation Rules, r 39 (2), contained in the Synodical Government Measure 1969, Sch. 3 (added by S.I. 1973 No. 1865). As to who may be elected and who are the electors, see PARA 510 ante.

2 Church Representation Rules, r 39 (3) (added by S.I. 1973 No. 1865).

3 Ibid r 39 (5) (amended by S.I. 1973 No. 1865).

4 Ibid r 39 (5) proviso (substituted by S.I. 1973 No. 1865).

5 Ibid r 39 (9) (amended by S.I. 1973 No. 1865).

UPDATE

513 Casual vacancies

TEXT AND NOTES--Rule 39 now r 48; SI 1994/3118. 'Casual vacancy' in r 48 includes the case where insufficient candidates have been nominated to fill the places available: r 48(11); SI 1989/2094.

TEXT AND NOTE 2--Casual vacancies must be filled: r 48(3); SI 1989/2094. The qualifying date for diocesan electors must be determined in accordance with r 35(5): r 48(3); SI 1994/3118.

TEXT AND NOTES 3, 4--Now r 48(7); SI 1989/2094, requiring only that the election be completed so far as possible within six months. The vacancy must not be filled unless the members of the bishop's council and standing committee who are from the same house otherwise direct. In calculating the period of six months (i) where during the course of an election irregularities are found which are of such a kind that the presiding officer is of the opinion that he should declare the proceedings null and void, he must so declare and notify all electors of such declaration and cause a fresh election to be held which must be completed within the period of six months from the date of the notice to the electors of the fresh election, (ii) where in an appeal a determination is made that there has been no valid election and the presiding officer is

directed to hold a fresh election, the period of six months runs from the date of such direction: r 48(10); SI 1989/2094.

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(C) FUNCTIONS AND PROCEEDINGS OF DIOCESAN SYNODS

514. Functions in general.

The functions of the diocesan synod are: (1) to consider matters concerning the Church of England and to make provision for such matters in relation to its diocese, and to consider and express its opinion on any other matters of religious or public interest¹; (2) to advise the bishop on any matters on which he may consult the synod²; and (3) to consider and express its opinion on any matters referred to it by the General Synod, and in particular to approve or disapprove provisions referred to it³ relating to forms of worship or union with another Christian body⁴.

It is the bishop's duty to consult with the diocesan synod on matters of general concern and importance to the diocese⁵.

The diocesan synod must keep the deanery synods of the diocese informed of the policies and problems of the diocese and of the business which is to come before meetings of the diocesan synod, and may delegate executive functions to deanery synods⁶. It must keep itself informed, through the deanery synods, of events and opinion in the parishes, and it must give opportunities for discussing at meetings of the diocesan synod matters raised by deanery synods and parochial church councils⁶.

The General Synod may by canon or regulation extend, amend or further define the functions of diocesan synods⁷.

1 Synodical Government Measure 1969, s 4 (2) (a). However, these functions do not include the issue of any statement purporting to declare the doctrine of the Church on any question: s 4 (2) proviso.

2 Ibid s 4 (2) (b). Except as may be provided by standing orders or directions of the diocesan synod, the synod's advisory and consultative functions under s 4 (2) (b) and (3) may be discharged by the bishop's council and standing committee (see PARA 516 post), but either the bishop or his council and standing committee may require any matter to be referred to the synod: s 4 (4).

3 I.e. under ibid s 2 (1), Sch. 2, art. 8; Synodical Government (Amendment) Measure 1974, s 2; Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 1 para 3: see PARAS 403-405 ante.

4 Synodical Government Measure 1969, s 4 (2) (c).

5 Ibid s 4 (3). See also note 2 supra.

6 Ibid s 4 (5).

7 Ibid S. 4 (6). If any question arises as to whether any matter falls within the functions of a diocesan synod as laid down by s 4 (2) or any canon or regulation relating to s 4 (2), it must be decided by the bishop: s 4 (6). See further PARA 308 ante.

UPDATE

514 Functions in general

TEXT AND NOTES 1-4--The functions of diocesan synods additionally include (4) to consider proposals for the annual budget for the diocese and to approve or disapprove them; and (5) to consider the annual accounts of the diocesan board of finance of the diocese: 1969 Measure s 4(2)(d), (e) (added by the Synodical Government (Amendment) Measure 2003 s 1(1)).

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515. Specific functions.

Specific functions are assigned to diocesan synods by a number of enactments. Their functions under the Church Representation Rules include the making of provision, by schemes, rules and otherwise, for the membership and procedure of deanery synods¹, and the division of a diocese into electoral areas for the purposes of elections to the House of Laity of the General Synod².

Diocesan synods have extensive functions in connection with the repair of benefice buildings, including the making of provision by scheme for the appointment or designation of parsonages boards, for the constitution and procedure of these boards³, and for the inspection and repair of parsonage houses and other buildings belonging to a benefice⁴. They are required also to establish schemes providing for the inspection of churches by architects at least once in every five years⁵.

The diocesan board of finance is subject to the control of the diocesan synod⁶, and the synod exercises various powers in relation to other boards and committees operating in the diocese⁷.

The elected advisers for the purpose of advising the bishop in the matter of presentations to benefices are elected triennially by the Houses of Clergy and Laity of the diocesan synod⁸, and the elected members of diocesan boards of patronage are similarly elected⁹.

1 See the Church Representation Rules, rr 19 (2) (d), (3) (d), 20 (2), (3), (5), (6), 21 (1), (2), 22 (1), 23 (1), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865), and PARA 528 et seq post.

2 See the Church Representation Rules, r 32 (2) (amended by S.I. 1973 No. 1865). Subject to the provisions of the rules, the power to make any rule, order, resolution, determination, decision, appointment or scheme, or to prescribe the manner of doing anything under the rules includes a power, exercisable in the same manner and subject to the same conditions, to revoke or vary it: r 42.

3 See the Repair of Benefice Buildings Measure 1972, ss 1, 15, 19, 30, and PARA 1164 et seq post.

4 See *ibid* ss 7, 10.

5 See the Inspection of Churches Measure 1955, s 1; Synodical Government Measure 1969, s 4 (7); and PARA 1099 post.

6 See the Diocesan Boards of Finance Measure 1925; Synodical Government Measure 1969, s 4 (7); and PARA 518 post.

7 See PARA 519 et seq post.

8 See the Benefices (Exercise of Rights of Presentation) Measure 1931, s 4; Synodical Government Measure 1969, s 4 (7). The synod also has power to make provision for other matters relating to the body of advisers: see PARA 818 post.

9 See the Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (1), (2); Synodical Government Measure 1969, s 4 (7); and PARA 790 post.

UPDATE

515 Specific functions

NOTE 2--Rules 32(2), 42 now rr 38(2), 52; SI 1994/3118.

TEXT AND NOTE 6--See also 1969 Measure s 4(2)(d), (e) (as added); and PARA 514 ante.

TEXT AND NOTE 8--1931 Measure replaced by Patronage (Benefices) Measure 1986 Pt II (ss 7-24) (see PARA 818A) which does not provide for such elected advisers.

NOTE 9--1932 Measure s 1(1), (2) now 1986 Measures Sch 3 para 1(1).

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516. Meetings and procedure.

The diocesan synod is required to make standing orders, and these must include certain specified provisions by virtue of which the following requirements will have effect¹.

A specified minimum number of meetings, being not less than two, must be held in each year², and a meeting must be held if not less than a specified number of members so request³.

The bishop need not be chairman of the meetings if and to the extent that standing orders otherwise provide⁴. There must be a secretary of the synod⁵.

In general, nothing is deemed to have the assent of the diocesan synod unless the three authorities which constitute the synod⁶ have assented to it⁷; this is subject to the following exceptions and qualifications: (1) questions relating only to the conduct of business are to be decided by the votes of all the members of the synod present and voting⁸; (2) every other question is to be decided in like manner, the assent of the three authorities being presumed, unless either any ten members present demand that a separate vote of each of the Houses of Clergy and Laity be taken, or the bishop requires his distinct opinion to be recorded⁹; (3) for the purposes of the provisions of the constitution of the General Synod relating to forms of worship or union with another Christian body⁹, any matter referred to the diocesan synod by the General Synod under those provisions is deemed to have been approved if the votes of the House of Clergy and of the House of Laity are in favour of it¹⁰.

There must be a bishop's council and standing committee of the diocesan synod, with such membership as may be provided by standing orders, and with responsibility for exercising the advisory and consultative functions of the synod in relation to the bishop¹¹, together with such other functions as may be assigned to it by the standing orders, by the Church Representation Rules or by any Measure or canon¹².

1 Church Representation Rules, r 28 (1), contained in the Synodical Government Measure 1969, Sch. 3. The standing orders may contain such further provisions consistent with the Church Representation Rules as the diocesan synod considers appropriate: r 28 (1). A model set of standing orders is available on which diocesan synods can base their own versions.

2 Church Representation Rules, r 28 (1) (c).

3 Ibid r 28 (1) (d).

4 Ibid r 28 (1) (a).

5 Ibid r 28 (1) (b).

6 As to the three authorities, see PARA 503 ante. Where the bishop's assent is required to a resolution of the synod, it must not lightly nor without grave cause be withheld: Revised Canons Ecclesiastical, Canon C18 para 5 (amended by Amending Canon No. 1).

7 Church Representation Rules, r 28 (1) (e).

8 Ibid r 28 (1) (f).

9 I.e. the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 8; Synodical Government (Amendment) Measure 1974, s 2; Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 1 para 3: see PARAS 403-405, 514 ante.

- 10 Church Representation Rules, r 28 (1) (g).
- 11 See the Synodical Government Measure 1969, s 4 (2) (b), (3), (4), and PARA 514 ante.
- 12 Church Representation Rules, r 28 (1) (h).

UPDATE

516 Meetings and procedure

TEXT AND NOTES--Rule 28 now r 34; SI 1994/3118. Additional requirements are that where there is an equal division of votes in the house of bishops, the diocesan bishop has a second or casting vote: r 34(1)(i); SI 1980/178; SI 1984/1039; and that the diocesan bishop has a right to require that his opinion on any question be recorded in the minutes: r 34(1)(j); SI 1980/178; SI 1984/1039.

TEXT AND NOTE 2--The specified minimum number of meetings is not less than two in each year: Church Representation Rules r 34(1)(c) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 7; SI 1980/178).

TEXT AND NOTE 6--Now the three houses which constitute the synod (see PARA 503): r 34(1)(e); SI 1980/178.

TEXT AND NOTE 7--If in the case of a particular question, except a matter referred to the diocesan synod by the General Synod under the Constitution art 8, the diocesan bishop (if present) so directs, that question is deemed to have the assent of the house of bishops only if the majority of the members of that house who assent thereto includes the diocesan bishop: r 34(1)(e); SI 1980/178; SI 1984/1039.

TEXT AND NOTE 8--Head (2) now: every other question is to be decided in like manner, the assent of the three houses being presumed, unless the diocesan bishop (if present) requires, or any ten members require, that a separate vote of each house be taken; r 34(1)(g); SI 1980/178; SI 1984/1039.

NOTE 10--Rule 28(1)(g) renumbered as r 34(1)(h).

TEXT AND NOTES 11, 12--Rule 28(1)(h) now renumbered r 34(1)(k). No person is entitled to serve as a member of more than one bishop's council and standing committee at the same time: r 34(2); SI 1980/178.

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B. DIOCESAN BOARDS OF FINANCE

517. Constitution of diocesan boards of finance.

A diocesan board of finance is a company constituted by the diocesan synod¹ of a diocese² and regulated by the Companies Acts 1948 to 1967³. The company's memorandum and articles of association must empower the board to hold property for purposes connected with the Church of England⁴, to transact business in that connection, and to act as a committee of the diocesan synod⁵, and must confer such further powers as the diocesan synod may think necessary or expedient in view of the requirements of the diocese⁶.

The memorandum and articles must also provide that the bishop of the diocese is an ex officio member, and that not less than three-quarters of the other members must be elected by the diocesan synod (or, if the memorandum and articles of association so provide or allow, wholly or in part by the deanery synods in the diocese), and that the remainder must be elected, nominated or co-opted in such manner as the memorandum or articles of association provide or allow⁷, but so that not less than two-thirds of the members elected by the diocesan synods or by deanery synods are members of the diocesan synod⁸, and that a majority are laymen⁹.

Provision was made by the Diocesan Boards of Finance Measure 1925 whereby an existing board of finance¹⁰, diocesan trust¹¹ or other appropriate body could, if certain specified requirements were satisfied, be declared to be the diocesan board of finance for the diocese¹².

1 See PARA 503 et seq ante.

2 Diocesan Boards of Finance Measure 1925, s 1 (1); Synodical Government Measure 1969, s 4 (7). A board constituted previously by a diocesan conference remains in being under transitional provisions: see s 4 para 3 (1).

3 Diocesan Board of Finance Measure 1925, s 1 (2).

4 Ibid s 1 (2) (a).

5 Ibid s 1 (2) (b); Synodical Government Measure 1969, s 4 (7).

6 Diocesan Boards of Finance Measure 1925, s 1 (2) (c); Synodical Government Measure 1969, s 4 (7).

7 Diocesan Boards of Finance Measure 1925, s 1 (2) (d); Synodical Government Measure 1969, ss 4 (7), 5 (2).

8 Diocesan Boards of Finance Measure 1925, s 1 (2) (d) (i); Synodical Government Measure 1969, ss 4 (7), 5 (2).

9 Diocesan Boards of Finance Measure 1925, s 1 (2) (d) (ii).

10 'Existing board of finance' means the body which has been recognised by the bishop as the board of finance of the diocese: *ibid* s 5 (a); Interpretation Measure 1925, s 3.

11 'Diocesan trust' means a body holding property upon trust for diocesan or parochial purposes and recognised by the bishop as a diocesan trust, but not as an existing board of finance: Diocesan Boards of Finance Measure 1925, s 5 (b).

12 *Ibid* s 2. It was further enacted that where an existing board of finance or diocesan trust did not become the board of finance for the diocese under the Measure, provision might be made for the transfer of the

property held by the existing board, or the whole or part of the property held by the diocesan trust, to the diocesan board of finance constituted under the Measure; such property would remain subject to all the trusts affecting the same: s 4 (1).

UPDATE

517 Constitution of diocesan boards of finance

TEXT--The constitution is deemed to include the furtherance of the work of the Church of England by the exercise of functions under the Endowments and Glebe Measure 1976: s 40.

The board must take steps to ensure that the diocesan member of the Central Board of Finance, see PARA 394, is (unless he is already the secretary of the diocesan board) a voting member of the diocesan board: Church of England (Miscellaneous Provisions) Measure 1978 s 5.

TEXT AND NOTE 3--Now Companies Act 1985.

NOTE 4--A diocesan board of finance holds property or the proceeds of sale of property transferred to it for diocesan purposes for those purposes only: *Barnes v Derby Diocesan Board of Finance* [2002] EWHC 2940 (Ch), [2003] Ch 239.

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518. Functions of diocesan board of finance.

In the exercise of its functions a diocesan board of finance must comply with the directions of the diocesan synod¹. These functions include the granting or withholding of consent to the acquisition by parochial church councils of any interest in land (other than a short lease) or in any personal property to be held on permanent trusts; the holding of any such interest; and the granting or withholding of consent to the sale, leasing, letting, exchange, charging or taking of legal proceedings with respect to the property concerned². A diocesan board of finance has certain functions in connection with the repair of benefice buildings³, and may itself be designated by a scheme of the diocesan synod as the parsonages board for the diocese⁴.

Its consent is necessary for the revocation or variation of the provisions of a pastoral scheme concerning payment of the endowment income of a benefice by the Church Commissioners to the diocesan stipends fund⁵, and it must be consulted by the commissioners as to the allocation of the diocesan stipends fund⁶ and concur in the application of money held to the credit of the income and capital accounts of that fund⁷.

1 Diocesan Boards of Finance Measure 1925, s 3; Synodical Government Measure 1969, s 4 (7).

2 Parochial Church Councils (Powers) Measure 1956, ss 1, 6. For details of these provisions, including the meaning of 'short lease', see PARA 583 post. The board has similar functions in respect of property held, acquired or administered upon charitable ecclesiastical trusts by incumbents and churchwardens and certain ecclesiastical corporations: see the Incumbents and Churchwardens (Trusts) Measure 1964, ss 1, 3-5, and PARA 1229 post.

3 See the Repair of Benefice Buildings Measure 1972, ss 17 (2) proviso, 19 (1).

4 Ibid s 1 (1), (9); see PARAS 520, 1165 post.

5 Pastoral Measure 1968, s 33 (2), (4). As to the diocesan stipends fund, see PARA 1235 post.

6 Diocesan Stipends Funds Measure 1953, ss 1, 2.

7 Ibid ss 4, 5.

UPDATE

518 Functions of diocesan board of finance

TEXT AND NOTE 1--See also 1969 Measure s 4(2)(d), (e); and PARA 514.

NOTE 1--1925 Measure s 3 renumbered s 3(1): Team and Group Ministries Measure 1995 s 7.

TEXT AND NOTE 2--Where a diocesan board of finance proposes to alter or dispose of any house occupied by a member of the team in a team ministry established for a benefice in the diocese, it must (1) keep that member informed of matters arising from the proposal, (2) afford that member an opportunity to express views before taking any action to implement the proposal, and (3) have regard to those views before taking any such action: 1925 Measure s 3(2) (added by 1995 Measure s 7).

TEXT AND NOTE 3--1972 Measure s 17 substituted: Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 8.

NOTE 5--Consolidated in Pastoral Measure 1983: see s 33(1), (3).

NOTE 7--1953 Measure s 5 now as substituted by Endowments and Glebe Measure 1976 s 9; and amended by the Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 6). 1953 Measure s 5 amended: 1992 Measure Sch 3 para 7.

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C. OTHER DIOCESAN BOARDS AND COMMITTEES

519. Statutory boards and committees.

In addition to the bishop's council and standing committee¹, and the diocesan board of finance², there is in each diocese a number of statutory boards and committees which, in respect of their constitutions and functions, stand in various degrees of relationship to the diocesan synod. In the case of the diocesan parsonages board, the diocesan synod prescribes the board's constitution and procedure, and the board must comply with the directions of, and submit reports to, the synod³. The synod has some measure of control over the composition of the pastoral committee of the diocese and over its procedure, but the committee is subject to the directions of the bishop and must submit its recommendations to him⁴. The diocesan education committee includes a substantial number of members elected by the diocesan synod and is declared to be responsible to the synod, but the extent of the control exercisable by the synod is not precisely defined⁵. The diocesan board of patronage includes members elected by the Houses of Clergy and of Laity of the diocesan synod, but in the exercise of its powers the board is independent of the synod⁶. The diocesan advisory committee for the care of churches⁷, the diocesan redundant churches uses committee⁸, and the ministerial committee of the diocese⁹ are, in respect of their constitution and their functions, fully independent of the diocesan synod. There is in addition a wide variety of non-statutory boards and committees in each diocese¹⁰.

1 See PARA 516 ante.

2 See PARAS 517, 518 ante.

3 See PARA 520 post.

4 See PARA 521 post.

5 See PARA 522 post.

6 See PARA 790 post.

7 See PARA 523 post.

8 See PARA 1136 post. However, at least one of the members appointed by the bishop must be a member of the diocesan synod: Pastoral Measure 1968, s 43 (2), Sch. 5 para 5 (e); Synodical Government Measure 1969, s 4 (7).

9 See PARA 734 et seq post.

10 These deal with such matters as training and ordination, readers, the ministry of women, missionary and ecumenical matters, youth work, social responsibility and family welfare, and Christian stewardship.

UPDATE

519 Statutory boards and committees

TEXT AND NOTES--The diocesan synod of every diocese must establish a committee, to be known for statutory purposes as the mission and pastoral committee, which has the following functions: (1) to make or assist in making better provision for the cure of

souls in the diocese as a whole and, to the extent that the committee thinks appropriate, in particular parts of the diocese or in particular parishes; (2) from time to time, as the bishop may direct, or as the committee thinks fit, to review arrangements for pastoral supervision and care in the diocese as a whole and, to the extent that the committee thinks appropriate, in particular parts of the diocese or in particular parishes (including sharing agreements in respect of a church or parsonage house and any proposals for sharing agreements); (3) from time to time, as the bishop may direct, or as the committee thinks fit, to prepare strategies or proposals for carrying out the committee's functions under heads (1) or (2) above for submission to the bishop and the diocesan synod for their approval; (4) to maintain an overview of matters relating to church buildings in the diocese and their use, other than matters which are within the jurisdiction of the consistory court or within the functions of the Diocesan Advisory Committee; (5) in the case of listed buildings or buildings in a conservation area, to make every endeavour to find a suitable alternative use or suitable alternative uses for churches which are proposed to be closed and buildings which have been closed for regular public worship in the diocese under a pastoral church buildings scheme and, in the case of any other such building, to develop proposals for the suitable alternative use or uses of the building or for the demolition of the building and the disposal of its site; (6) where it considers it desirable, to make recommendations to the bishop in accordance with the 1983 Measure s 3 for any of the matters for which provision may be made under the 1983 Measure, other than s 36, by a pastoral scheme or order; and (6) to carry out any other functions conferred on a pastoral committee or a redundant churches uses committee of a diocese by or under the 1983 Measure or any other enactment: Dioceses, Pastoral and Mission Measure 2007 ss 52(1), (2), 53(3), Sch 3. There is no longer to be a diocesan redundant churches uses committee for any diocese: s 52(6).

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520. Diocesan parsonages board.

The diocesan synod must provide by scheme¹ either for the appointment of a parsonages board², or for designating the diocesan board of finance as the parsonages board for the diocese³. Every such scheme must provide also for the appointment of diocesan surveyors and for determining their remuneration and terms of service⁴. Where a parsonages board is appointed, all archdeacons of the diocese are members of it ex officio, and of remaining members at least one-third must be clergymen elected by clergy of the diocese⁵, and at least one-third must be lay persons⁶; but subject to these requirements the membership of the board and the method of election or appointment and term of office of its members (other than ex officio members) must be prescribed by the scheme⁶. Subject to the foregoing provisions, the constitution and procedure of a parsonages board are to be prescribed by scheme of the diocesan synod⁷.

The parsonages board is a body corporate with perpetual succession and a common seal; it has power, in the exercise of its functions, to enter into contracts, hold property, borrow money and execute works, and has such other ancillary powers as may be provided by scheme of the diocesan synod⁸.

It must present an annual report and annual accounts to the diocesan synod⁹; and it must comply with any directions given by resolution of the synod¹⁰. The Church Commissioners may at any time seek information from, and give advice to, the board on any matter concerning its functions, and the board must provide the information and have regard to the advice¹¹.

1 Schemes made by a diocesan synod under the Repair of Benefice Buildings Measure 1972 do not take effect until they have been approved by the Church Commissioners either without variation or with such variations as may be agreed by the commissioners and the synod, and a copy of every scheme must be left in the diocesan registry: s 30 (1). The duties and powers of diocesan synods under the Measure may be exercised by a single scheme or by separate schemes, and any scheme may be varied, revoked or replaced by a subsequent scheme made and approved in like manner: s 30 (2). Any scheme may contain necessary or expedient supplementary and incidental provisions, may provide a commencement date, and may specify different dates for different provisions or different areas: s 30 (3). No scheme might come into operation until the appointed day, as to which, and as to the extent of the Measure, see PARA 1165 note 4 post.

2 Ibid s 1 (1) (a).

3 Ibid s 1 (1) (b). The purposes of the parsonages board are the furtherance of the work of the Church of England by the exercise of its functions under the Measure: s 1 (5). As to the dissolution of the former diocesan dilapidations boards and the transfer of their functions to parsonages boards, with consequential provisions, see s 29, and the transitional provisions of Sch. 1. As to the diocesan board of finance, see PARAS 517, 518 ante.

4 Ibid s 1 (2).

5 I.e. the beneficed clergy and, if the scheme so provides, the licensed clergy: ibid s 1 (4).

6 Ibid s 1 (4).

7 Ibid s 1 (6). The scheme may provide for the appointment of committees and the exercise of functions by them, and for the appointment of officers and other staff and for determining their remuneration and terms of service: s 1 (6). As to the secretary of the board, see s 1 (3). If the diocesan board of finance is designated as the parsonages board (see the text and note 3 supra), the scheme must provide for the delegation of its functions under the Measure to a committee or committees (which may include persons other than members of the board), and in prescribing the membership of the committee or committees regard must be had to the need for adequate representation of the clergy and laity; and it may contain provisions as to the procedure of the

committee: s 1 (9) (a). The memorandum and articles of association of the board or (if it is not a registered company) its constitution will be deemed to include the appropriate purposes and powers: s 1 (9) (b). The annual report and accounts under s 1 (7) may be presented as a separate part of the board of finance's annual report and accounts: s 1 (9) (c).

8 Ibid s 1 (5). See also PARA 1165 et seq post.

9 Ibid s 1 (7).

10 Ibid s 1 (8).

11 Ibid s 24.

UPDATE

520 Diocesan parsonages board

NOTE 1--A copy of any scheme made by a diocesan synod under the 1972 Measure must be sent to the commissioners and filed in the diocesan registry: s 30(1) (substituted by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 12).

TEXT AND NOTE 4--No person appointed as a surveyor after 1 June 2005 is to be considered to be a fit person for the purposes of the 1972 Measure s 1(2) unless that person is registered under the Architects Act 1997 or is a corporate member of the Chartered Institute of Building or the Royal Institution of Chartered Surveyors or a member of such other body as the Commissioners may determine and appearing to them to be suitably qualified: 1972 Measure s 1(2) proviso (added by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 2).

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521. Pastoral committee.

The diocesan synod of every diocese except Sodor and Man must appoint a committee known as the pastoral committee of the diocese¹. The diocesan bishop will be a member of the committee if he so desires², and every suffragan bishop and archdeacon in the diocese is an ex officio member³. The diocesan board of finance, the diocesan parsonages board and the diocesan advisory committee for the care of churches must each appoint a member of the pastoral committee, who must be a member or office of the body appointing him⁴. The remaining members are to be appointed or elected in such manner as the diocesan synod may determine, but at least one-third of all the members of the committee must be of the clergy and at least one-third must be of the laity, and not more than one-third may be ex officio members⁵. Members (other than ex officio members) hold office for five years or such lesser period as the diocesan synod may determine, but are eligible for reappointment⁶.

At a meeting of the committee not less than one-third of the members form a quorum⁷, and every question submitted is to be decided by a majority of those present and voting⁸. The committee has power to delegate certain of its functions to sub-committees, which may include persons who are not members of the committee⁹. Subject to these provisions and to any directions given by the diocesan synod, the committee has power to regulate its own procedure¹⁰. It must present an annual report to the diocesan synod¹¹.

1 Pastoral Measure 1968, s 1 (1); Synodical Government Measure 1969, s 4 (7). As to the committee's functions, see PARA 861 et seq post. As to the power to constitute a joint pastoral committee for two or more dioceses, see PARA 457 ante. The Pastoral Measure 1968 does not extend to the diocese of Sodor and Man, nor to the Channel Islands unless specially applied by Order in Council: s 96 (2); see also PARA 402 ante.

2 Ibid s 1 (2), Sch. 1 para 1. The bishop will be the chairman of the committee if he so desires (Sch. 1 para 1), if he does not desire to be chairman, he must appoint a chairman, who at the time of his appointment need not be a member of the committee, but must be a member of the diocesan synod (Sch. 1 para 2; Synodical Government Measure 1969, s 4 (7)).

3 Pastoral Measure 1968, Sch. 1 para 3.

4 Ibid Sch. 1 para 4; Repair of Benefice Buildings Measure 1972, s 29.

5 Pastoral Measure 1968, Sch. 1 para 5; Synodical Government Measure 1969, s 4 (7).

6 Pastoral Measure 1968, Sch. 1 para 6; Synodical Government Measure 1969, s 4 (7). The committee may act notwithstanding any vacancy in its membership: Pastoral Measure 1968, Sch. 1 para 8.

7 Ibid Sch. 1 para 7.

8 Ibid Sch. 1 para 9. The chairman of the meeting has a second or casting vote: Sch. 1 para 9.

9 Ibid Sch. 1 para 10. However, a majority of the sub-committee must be members of the committee: Sch. 1 para 10.

10 Ibid Sch. 1 para 11; Synodical Government Measure 1969, s 4 (7).

11 Pastoral Measure 1968, s 1 (3); Synodical Government Measure 1969, s 4 (7).

UPDATE

521 Pastoral committee

TEXT AND NOTES--Consolidated, with amendments, in Pastoral Measure 1983; see s 1, Sch 1 (both repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7). See now Pt VI (ss 52, 53); and PARA 519.

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522. Diocesan education committee.

For every diocese except Sodor and Man there must be a diocesan education committee¹ responsible to the diocesan synod and having the rights, powers, duties and obligations vested in it by the Diocesan Education Committees Measure 1955². The committee must be constituted either in accordance with that Measure³ or in accordance with an order made by the Secretary of State upon a request by the diocesan synod and with the consent of the bishop⁴. If constituted in accordance with the Measure the committee will consist of (1) the bishop, any suffragan and assistant bishops, and the archdeacons of the diocese, all being members *ex officio*⁵; (2) at least twelve and not more than twenty members elected by the diocesan synod, of whom at least four must be clergymen and at least six must be lay persons (including at least two women)⁶; (3) not more than eight co-opted members⁷; and (4) not more than four additional members who may be nominated by the bishop⁸. The committee, if so constituted, has power to fill any casual vacancies, and may act notwithstanding any vacancy in its membership⁹. It may appoint sub-committees, which may include persons who are not members of the committee¹⁰. Subject to these provisions and to any directions given by the diocesan synod, the committee may regulate its own procedure¹¹.

The committee has the right, power, duty and obligation, from time to time: (a) to take such steps as appear conducive to promoting religious education, according to the faith and practice of the Church of England¹², and to promote and co-operate with other religious bodies and local educational authorities¹³ in promoting religious education within the diocese¹⁴; (b) to watch the interests of church schools¹⁵ and take action to secure the provision of new schools¹⁶; (c) to give advice to trustees, owners and managers or governors of church schools and others concerned as to any matters affecting church schools within the diocese¹⁷; and (d) to make plans to further the development and organisation of religious education in the diocese and in particular of instruction in religious knowledge according to the faith and practice of the Church of England after consultation with trustees, owners and managers or governors of church schools within the diocese and others concerned¹⁸. Trustees, owners and managers or governors of every church school in a diocese are bound to consult the committee before making any agreement or arrangement with the Secretary of State, the Charity Commissioners or the local education authority for or with respect to the restoration, rearrangement, continuance, discontinuance, closing, sale or lease of, or other dealing with, the church school or for its amalgamation with any other school¹⁹.

1 If the committee is constituted in accordance with an order made by the Secretary of State (see *infra*) it will be known by the name designated in the order: Diocesan Education Committees Measure 1955, s 1 (2).

2 Ibid s 1 (1).

3 See *ibid* Schedule.

4 Ibid ss 1 (2), 3 (1); Synodical Government Measure 1969, s 4 (7); Secretary of State for Education and Science Order 1964, S.I. 1964 No. 490. The Secretary of State may by order amend, vary or revoke any order made under this provision: Diocesan Education Committees Measure 1955, s 1 (3).

5 Ibid s 1 (2), Schedule, PARA. (1). The bishop will be chairman of the committee unless he decides not to act as such, in which case some other person must be appointed by the committee: Schedule, PARA. (5).

6 Ibid Schedule, PARA. (2); Synodical Government Measure 1969, s 4 (7). Elections must be held in such manner as the diocesan synod may direct; to qualify for election a clergyman must hold a separate cure of

souls in a parish or conventional district within the diocese; and elected members hold office for three years or until their successors are appointed, whichever is the later: Diocesan Education Committees Measure 1955, Schedule, PARA. (2); Synodical Government Measure 1969, s 4 (7).

7 Diocesan Education Committees Measure 1955, Schedule, PARA. (3). They must be persons who are for the time being trustees, foundation managers, foundation governors or otherwise interested in church schools in the diocese, of whom not less than half must be foundation managers or foundation governors: Schedule, PARA. (3). 'Church school' means a voluntary school within the meaning of the Education Act 1944, s 9 (2) (see EDUCATION vol 15(1) (2006 Reissue) PARA 102), including its site and buildings, which by virtue of a statute or charter or scheme, order or other instrument made by virtue of a statute or other authority, or any trust or usage or repute, or any combination thereof is for the time being held on trust for the purposes of primary or secondary education as defined in s 8 together with instruction, either as part of it or in addition to it, in religious knowledge according to the faith and practice of the Church of England: Diocesan Education Committees Measure 1955, s 3 (1).

8 Ibid Schedule, PARA. (4). At least two of them must be teachers in church schools: Schedule, PARA. (4).

9 Ibid Schedule, PARA. (7). Eight members form a quorum: Schedule, PARA. (8).

10 Ibid Schedule, PARA. (9).

11 Ibid Schedule, PARA. (10); Synodical Government Measure 1969, s 4 (7).

12 Diocesan Education Committees Measure 1955, s 2 (1) (i).

13 'Local education authority' has the same meaning as in the Education Act 1944 (see s 114 (1), and EDUCATION vol 15(1) (2006 Reissue) PARA 20): Diocesan Education Committees Measure 1955, s 3 (1).

14 Ibid s 2 (1) (iii).

15 Ibid s 2 (1) (i).

16 Ibid s 2 (1) (ii).

17 Ibid s 2 (1) (iv).

18 Ibid s 2 (1) (v).

19 Ibid s 2 (2); Secretary of State for Education and Science Order 1964: see EDUCATION vol 15(1) (2006 Reissue) PARA 52.

UPDATE

522 Diocesan education committee

TEXT AND NOTES--Diocesan Education Committees Measure 1955 repealed: Diocesan Boards of Education Measure 1991, see PARA 522A. As to transitional provision see the 1991 Measure s 12.

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522A. Diocesan boards of education.

1. Formation

For every diocese there must be a diocesan board of education responsible to the diocesan synod¹. The bishop, after consultation with the board, must appoint a director of education for the diocese who must act as secretary of the board². The board may be a body corporate or unincorporate³. The functions of the board are (1) to promote or assist in the promotion of education in the diocese, being education which is consistent with the faith and practice of the Church of England; (2) to promote or assist in the promotion of religious education and religious worship in the diocese; (3) to promote or assist in the promotion of church schools in the diocese and to advise the governors of such schools and trustees of church educational endowments and any other body or person concerned on any matter affecting church schools in the diocese; (4) to promote co-operation between the board and bodies or persons concerned in any respect with education in the diocese; (5) certain advisory and consultative functions⁴; and (6) such other functions as are assigned to the board by the diocesan synod, other than functions relating to church schools or church educational endowments⁵. The board must make an annual report on the exercise of its functions to the diocesan synod⁶.

1 Diocesan Boards of Education Measure 1991 s 1(1). As to the constitution of the board see s 1(2), (3), Schedule Pt I. As to the proceedings of the board see s 1(6), Schedule Pt II.

2 Ibid s 1(4).

3 Ibid s 1(5).

4 Ie those assigned to the board by the 1991 Measure (see PARA 522A.2).

5 Ibid s 2(1). The board also has power to do all things incidental or conducive to the discharge of its functions: s 2(2).

6 Ibid s 2(3).

2. Advisory functions

The governing body of any church school, and the trustees of any church educational endowment, must obtain the advice of the board for the diocese in which the school is situated and must have regard to that advice before (1) publishing proposals for any prescribed alteration to the school¹; (2) publishing proposals for the discontinuance of the school²; (3) serving notice of an intention to discontinue the school³; (4) consulting⁴ about proposed admission arrangements for any school year; (5) in the case of a school in Wales, publishing proposals for changing the category of the school⁵; or (6) making any application to, or entering into any agreement with, any body or person for or in connection with any disposal (whether by sale or otherwise) of the premises of the school or any part of them⁶.

The governing body of a church school in England must not, unless it has obtained the consent in writing of the board for the diocese in which the school is situated, publish proposals⁷ (a) where the school is a voluntary school, for a change of category to foundation school; or (b) where the school is a foundation school, for a change in the instrument of government which results in the majority of governors being foundation governors⁸.

The governing body of any church school which is a voluntary aided school must not, unless it has obtained the consent in writing of the board for the diocese in which it is situated, enter into any agreement or arrangement for any alteration or repair of the premises of the school, being an alteration or repair in respect of which grant may be paid by the Secretary of State or of which the approval of the Secretary of State is required before it is carried out⁹. Where the giving of advice or consent is to be considered at any meeting of the board, at least 14 days' notice of the time and place at which the meeting is to be held must be given by the secretary of the board to the clerk to the governing body of the school concerned, and the governors of the school are entitled to attend the meeting¹⁰.

The trustees of any church educational endowment held for a church school must obtain the advice of the board and must have regard to that advice before making or agreeing to the making of any alteration in the purposes for which the endowment may be applied¹¹.

A local authority must consult the board for any diocese in which the authority exercises its functions before appointing a person to represent the Church of England as a member of a standing advisory council on religious education¹².

1 Ie, in the case of a school in England, under of the Education and Inspections Act 2006 s 19(3) (see EDUCATION vol 15(1) (2006 Reissue) PARA 165A.1), or in the case of a school in Wales, under School Standards and Framework Act 1998 s 28(2)(a) (see EDUCATION vol 15(1) (2006 Reissue) PARA 132).

2 Ie, in the case of a school in England, under of the 2006 Act s 15(2) (see EDUCATION vol 15(1) (2006 Reissue) PARA 165A.3), or in the case of a school in Wales, the 1998 Act s 29(2) (see EDUCATION vol 15(1) (2006 Reissue) PARA 134).

3 Ie under ibid s 30(1); see EDUCATION vol 15(1) (2006 Reissue) PARA 135.

4 Ie under ibid s 89(2); see EDUCATION vol 15(1) (2006 Reissue) PARA 398.

5 Ie under ibid Sch 8 paras 2 or 3; see EDUCATION vol 15(1) (2006 Reissue) PARA 114.

6 Diocesan Boards of Education Measure 1991 s 3(1), amended by 1998 Act Sch 30 para 30; the Education Act 2002 Sch 4 para 13; and the 2006 Act Sch 3 para 4.

7 Ie under ibid s 19; see EDUCATION vol 15(1) (2006 Reissue) PARA 165A.5.

8 1991 Measure s 3(1A) (added by the 2006 Act Sch 3 para 4).

9 1991 Measure s 3(2), amended by 1998 Act Sch 30 para 30. This requirement does not apply in relation to any alteration or repair of premises of which the estimated cost is less than an amount from time to time determined by the board: 1991 Measure s 3(3).

10 1991 Measure s 3(6), amended by 1998 Act Sch 30 para 30; and the 2006 Act Sch 3 para 4.

11 1991 Measure s 4.

12 1991 Measure s 6(1). As to the standing advisory council, see the Education Act 1996 s 390, amended by School Standards and Framework Act 1998 Sch 30 para 93. This provision is without prejudice to the local authority's duty under the 1996 Act s 392(2) to assure itself that the person appointed is representative of the denomination: 1991 Measure s 6(1); 1996 Act Sch 37 para 104.

3. Power to give directions

Where the board is satisfied that the governing body of a voluntary aided church school in the diocese in discharging, or failing to discharge, its functions so far as relating to (1) the making of any prescribed alteration to the school¹; (2) the discontinuance of the school², or (3) in the case of a school in Wales, changing the school's category³, is acting in a manner which is not in the interests of that school or of church schools generally, the Board may give directions to the governing body as to the discharge of those functions⁴. Where the giving of directions is to be considered at any meeting of the board, at least 14 days notice of the time and place at which

the meeting is to be held must be given by the secretary of the Board to the clerk of the governing body of the school concerned, and the governors of that school are entitled to attend the meeting⁵. No directions may be given unless they have been approved by a two-thirds majority of the members of the board present and voting at the meeting⁶. It is the duty of any governing body to comply with any lawful directions given to it⁷. Where the board gives directions, it must cause a report on them to be laid before the next meeting of the diocesan synod⁸.

Corresponding provision is made for the giving of directions to the trustees of church educational endowments⁹.

1 Ie, in the case of a school in England, under of the Education and Inspections Act 2006 Pt 2 (ss 7-32), or in the case of a school in Wales, under the School Standards and Framework Act 1998 Pt II Ch II (ss 28-35); see EDUCATION.

2 Ie, in the case of a school in England, under of the 2006 Act Pt 2 (ss 7-32) or the 1998 Act s 30, or in the case of a school in Wales, under the 1998 Act Pt II Ch II (ss 28-35); see EDUCATION.

3 Ie under *ibid* Sch 8 paras 2 or 3; see EDUCATION vol 15(1) (2006 Reissue) PARA 114.

4 Diocesan Boards of Education Measure 1991 s 7(1), substituted by 1998 Act Sch 30 para 31, amended by the 2006 Act Sch 3 para 5. However, the board may not, under 1991 Measure s 7(1), give directions as to the publication of proposals under 2006 Act s 19(3) or 1998 Act Sch 8 para 2 or 3 which would prevent the publication of proposals for the school to become a foundation school: 1991 Measure s 7(1A), added by 1998 Act Sch 30 para 31, amended by the 2006 Act Sch 3 para 5.

5 1991 Measure s 7(2), amended by 1998 Act Sch 30 para 31.

6 1991 Measure s 7(2), amended by 1998 Act Sch 30 para 31.

7 1991 Measure s 7(3), amended by 1998 Act Sch 30 para 31 and the 2006 Act Sch 3 para 5. If, before the expiration of six months beginning on the date on which the directions are given, the governing body fails to comply with directions with respect to the publication of proposals for any prescribed alteration to the school under 1998 Act 28(2)(b) (see EDUCATION vol 15(1) (2006 Reissue) PARA 132) or publication of proposals under *ibid* Sch 8 paras 2 or 3 (see EDUCATION vol 15(1) (2006 Reissue) PARA 114), the Board may itself publish those proposals, and the provisions of the 1998 Act will apply to anything done by the Board by virtue of the 1991 Measure s 7(3) as if it had been done by the governing body of the school: s 7(3), as amended.

8 *Ibid* s 7(4).

9 See *ibid* s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(7) DIOCESES/(v) Diocesan Synods, Boards and Committees/C. OTHER DIOCESAN BOARDS AND COMMITTEES/523. Diocesan advisory committee.

523. Diocesan advisory committee.

In every diocese except Sodor and Man there must be an advisory committee for the care of churches; known as the diocesan advisory committee, consisting of the archdeacons of all the archdeaconries in the diocese and such other persons as the bishop may by writing appoint¹. It is this committee's duty to advise the archdeacon before the issue of a certificate in the exercise of his functions under the faculty jurisdiction² and, if required to do so, to advise (1) the judge³; (2) intending applicants for faculties⁴; (3) persons building new churches, converting buildings for the purpose of churches or erecting buildings or converting existing buildings with the intention that they shall be licensed for public worship⁵; and (4) persons owning or responsible for the upkeep of unconsecrated buildings licensed for public worship⁶.

A diocesan advisory committee may make its own rules of procedure, and may adopt any general regulations as to procedure made by the Council for Places of Worship⁷.

1 Faculty Jurisdiction Measure 1964, s 13 (1). The term of office of appointed members is five years and they are eligible for reappointment; the bishop may appoint one of the members of the committee to be chairman: s 13 (1). The Measure does not apply to the Channel Islands nor the Isle of Man: s 17 (1).

2 Ibid s 13 (2). As to archdeacons' certificates, see s 12, and PARA 1331 et seq post.

3 Ibid s 13 (2) (a). 'Judge' means the judge of the ecclesiastical court of any province or diocese: s 15. As to the judge's power to require the committee's advice, his duty to do so in certain cases and his power to call a committee member as a witness, see PARA 1321 post.

4 Ibid s 13 (2) (b). As to the faculty jurisdiction, see PARA 1306 et seq post.

5 Ibid s 13 (2) (c).

6 Ibid s 13 (2) (d).

7 Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 10 (3). As to the Council for Places of Worship (which is the successor to the Central Council of Diocesan Advisory Committees for the Care of Churches), see PARA 392 ante, 1321 post.

UPDATE

523 Diocesan advisory committee

TEXT AND NOTES--1964 Measure s 13 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 2(8). Each advisory committee must have a written constitution provided by the diocesan synod: s 2(1). As to the provisions to be contained in a constitution see ibid Sch 1. The constitution may also include such further provisions as the diocesan synod considers appropriate in connection with its procedure or for the establishment of sub-committees: s 2(3). The advisory committee must have certain specified functions and such other functions as may be determined by the diocesan synod by resolution: s 2(5), Sch 2. In carrying out its functions the committee and sub-committees must have regard to the rites and ceremonies of the Church of England: s 2(5). Any expenses incurred for the purpose of giving the advisory committee a constitution and for enabling it to discharge its functions properly and effectively must be paid by the diocesan board of finance: s 2(6). As soon

as practicable after the end of each year, the advisory committee must prepare a report of its work and proceedings during that year and cause it to be laid before the diocesan synod, and send a copy to the Council for the Care of Churches: s 2(7). Until an advisory committee is given a constitution, it must continue to be formed and act in accordance with the 1964 Measure s 13: 1991 Measure s 2(8).

As to the keeping of a register of petitions for faculties by the secretary to the advisory committee see PARA 1321.

Any person or body carrying out functions of care and conservation must have due regard to the role of a church as a local centre of worship and mission: 1991 Measure s 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(i) Rural Deans and Deaneries/524. Rural deans.

(8) RURAL DEANERIES

(i) Rural Deans and Deaneries

524. Rural deans.

The office of rural dean is of ancient origin. It declined in importance in the later middle ages and was virtually in abeyance for some centuries after the Reformation, but it was revived in the nineteenth century and now has an important place in the organisation of synodical government¹.

There appears to be no statutory qualification for the office of rural dean², but a clergyman beneficed in the deanery is usually appointed. The rural dean is to be a clerk in holy orders resident in the rural deanery, of the best ability, integrity and piety. The appointment is in the hands of the bishop of the diocese and archdeacon³, and the bishop sometimes appoints by letters patent under the episcopal seal. The rural dean is not a permanent officer, but may be removed at the will of his superior, whose minister he is³. It is said that he may give induction in the absence of the archdeacon⁴. The office carries no remuneration.

1 See Godolphin's Repertorium Canonicum, App. 6; Gib Cod 971, 972; Phillimore, Ecclesiastical Law (2nd Edn) 208-213. See also the Report on Rural Deans, presented to the Lower House of the Convocation of Canterbury 1948, no. 665.

2 The Church Representation Rules, however, contemplate that the rural dean will invariably be a member of the deanery synod, thus implying that he will be a person who has the qualifications for such membership: see rr 19 (2), 23 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3, and PARA 533 post.

3 Godolphin's Repertorium Canonicum, App. 6.

4 Godolphin's Repertorium Canonicum, App. 6. In modern practice he inducts only on the archdeacon's mandate.

UPDATE

524 Rural deans

TEXT AND NOTES--Where a rural dean is unable by reason of illness or absence to carry out any or all of his functions, the bishop of the diocese in which the rural deanery is may appoint by an instrument under his hand another person to perform any or all of the rural dean's functions for a specified period: Church of England (Miscellaneous Provisions) Measure 2000 s 12(1)-(3). The bishop of a diocese may by order declare that the office of rural dean is to be called the office of area dean: s 12(4).

TEXT AND NOTE 2--It is lawful for a deacon to be appointed to the office of rural dean, notwithstanding anything in the Act of Uniformity 1662 s 10: Church of England (Miscellaneous Provisions) Measure 1992 s 14.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(i) Rural Deans and Deaneries/525. Rural dean's functions.

525. Rural dean's functions.

It is the duty of the rural dean to report to the bishop any matter in any parish within the deanery which it may be necessary or useful for the bishop to know, particularly any case of serious illness or other form of distress among the clergy, the vacancy of any cure of souls and the measures taken by the sequestrators to secure the ministration of the Word and sacraments and other rites of the Church during the vacancy, and any case of a minister from another diocese officiating without authority¹. If any omission in a parish to prepare and maintain a church electoral roll or to form or maintain a parochial church council or to hold the annual parochial church meeting is brought to the notice of the rural dean, he must ascertain and report to the bishop its cause². If at any time the rural dean has reason to believe that there is any serious defect in the fabric, ornaments and furniture of any church or chapel, or that the buildings of any benefice are in a state of disrepair, he must report the matter to the archdeacon³.

The rural dean is a joint chairman, with a member of the House of Laity, of the deanery synod⁴. He is a member of the diocesan board of patronage when the board is transacting business in respect of any benefice within the deanery⁵, he is an 'interested party' for the purposes of representations to the pastoral committee of the diocese⁶, and he frequently acts as one of the sequestrators of a vacant benefice within the deanery⁷.

1 Revised Canons Ecclesiastical, Canon C23 para 1. As to authority to exercise ministry, see Canon C8, and PARA 666 post.

2 Church Representation Rules, r 43 (5), contained in the Synodical Government Measure 1969, Sch. 3; Revised Canons Ecclesiastical, Canon C23 para 2. He also has certain functions in relation to appeals under the Church Representation Rules: see r 36 (2), (5) (amended by S.I. 1973 No. 1865), and PARA 596 post.

3 Revised Canons Ecclesiastical, Canon C23 para 3. As to the responsibility of archdeacons in such matters, see PARAS 1098, 1099 post.

4 Church Representation Rules, r 23 (1) (a). As to deanery synods, see PARA 527 et seq post.

5 Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (1) (iv): see PARA 790 post.

6 Pastoral Measure 1968, s 3 (2) (d): see PARA 862 post.

7 As to sequestration generally, see PARA 892 et seq post.

UPDATE

525 Rural dean's functions

NOTE 2--The rural dean no longer has these functions in relation to appeals; see r 43(2), (5); SI 1984/1039, SI 1994/3118. Rule 43 now r 53; SI 1994/3118.

NOTE 5--Now Patronage (Benefices) Measure 1986 Sch 3 para 1(1).

NOTE 6--See now Pastoral Measure 1983 s 3(2)(e), (3)(c).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(i) Rural Deans and Deaneries/526. Rural deaneries.

526. Rural deaneries.

Every parish is within some rural deanery¹ or, as it is often called today, deanery². A pastoral scheme or order may provide for creating, altering or dissolving a deanery, and must name any new deanery so created; it must, where necessary, designate the deanery to which any benefice created or altered by the scheme or order is to belong; and it may alter the name of any deanery³. A provision which dissolves a deanery may be brought into operation without the assent of the rural dean and without waiting for a vacancy in the deanery⁴.

1 Ecclesiastical Commissioners Act 1836, preamble.

2 'Deanery' means rural deanery: Synodical Government Measure 1969, s 9 (2). The term 'deanery' is used in this title, except where the context otherwise requires.

3 Pastoral Measure 1968, ss 18, 38 (d). As to pastoral schemes and orders, see PARA 856 et seq post.

4 Ibid s 24 (1).

UPDATE

526 Rural deaneries

TEXT AND NOTES--Where a rural deanery is vacant, the bishop of the diocese in which the rural deanery is may appoint by an instrument under his hand another person to perform any or all of the rural dean's functions for a specified period: Church of England (Miscellaneous Provisions) Measure 2000 s 12(1)-(3).

NOTE 1--1836 Act preamble repealed: Statute Law (Repeals) Act 2004.

NOTE 3--Consolidated in Pastoral Measure 1983; see ss 19, 37(1)(d) (as renumbered by Team and Group Ministries Measure 1995 s 5).

NOTE 4--Now 1983 Measure s 25(1).

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(ii) Deanery Synods

A. CONSTITUTION AND MEMBERSHIP

527. Constitution of deanery synods.

The system of synodical government which came into operation in 1970 included the creation of deanery synods¹ which took the place of ruridecanal conferences (where they existed), whereupon those conferences were dissolved². Deanery synods, with functions much wider than those of the ruridecanal conferences, were required to be constituted for all deaneries³; their membership and procedure are prescribed by the Church Representation Rules⁴.

1 See PARA 386 ante.

2 Synodical Government Measure 1969, s 5 (2). References in any Measure to ruridecanal conferences must now be construed as references to deanery synods: s 5 (2). For transitional provisions, see Sch. 4 para 3.

3 Ibid s 5 (1). As to their functions, see PARA 532 post. 'Deanery' in this Measure means rural deanery: s 9 (2). The provisions of the Measure respecting deanery synods do not extend to the Isle of Man except insofar as they may be applied (with or without adaptations and modifications) by Act of Tynwald: s 9 (3), (4): see PARA 388 ante. For the application of the Synodical Government Measure 1969 to the Channel Islands, see s 9 (3), (5), and the Synodical Government (Channel Islands) Order 1970, S.I. 1970 No. 1117, whereby the decanal conferences of the Channel Islands are renamed deanery synods and the provisions of the Synodical Government Measure 1969 relating to the functions of deanery synods (s. 5 (3), (4)) are applied to them. See also the Channel Islands (Representation) Measure 1931, and PARAS 388, 402 ante.

4 Synodical Government Measure 1969, s 5 (1); Church Representation Rules, Part III (rr. 19-23), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865); see PARA 528 et seq post. In the Channel Islands a deanery synod has power itself to make rules in respect of such matters: Channel Islands (Representation) Measure 1931, ss 3, 7; Synodical Government Measure 1969, s 5 (2). As to the Church Representation Rules, see PARA 389 ante.

UPDATE

527 Constitution of deanery synods

NOTE 2--1969 Measure Sch 4 para 3 amended: Statute Law (Repeals) Act 2004.

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528. Membership of deanery synods.

A deanery synod consists of a House of Clergy and a House of Laity¹.

The members of the House of Clergy consist of (1) the clerks in holy orders beneficed in or licensed to any parish in the deanery²; (2) any clerks in holy orders licensed to institutions in the deanery under the Extra-Parochial Ministry Measure 1967³; (3) any clerical members of the General Synod or diocesan synod resident in the deanery⁴; and (4) such other clerks in holy orders holding the bishop's licence and resident or working in any part of the deanery as may be determined by or in accordance with a resolution⁵ of the diocesan synod⁶.

The members of the House of Laity consist of (a) the parochial representatives elected to the deanery synod by the annual meetings of the parishes of the deanery⁷; (b) any lay members of the General Synod or diocesan synod whose names are entered on the roll of any parish in the deanery⁸; (c) if in the diocesan bishop's opinion any community of persons in the deanery who are in the spiritual care of a chaplain licensed by the bishop should be represented in that House, one lay person chosen in the manner approved by the bishop from among the members of that community⁹; and (d) such other lay persons, being deaconesses or whole-time lay workers licensed by the bishop to work in any part of the deanery, as may be determined by or in accordance with a resolution of the diocesan synod¹⁰.

Each House may co-opt additional members¹¹, but the number co-opted by either House must not exceed 5 per cent of the total number of members of that House or three, whichever is the greater¹².

The diocesan synod must exercise its powers¹³ so as to secure that the total number of members of any deanery synod, shall not exceed 150¹⁴ nor, as far as practicable, be less than fifty¹⁵, but the maximum number of 150 may be exceeded for the purpose of securing that the House of Laity is not less in number than the House of Clergy¹⁶.

1 Church Representation Rules, r 19 (1), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 19 (2) (a).

3 Ibid r 19 (2) (b). As to the Extra-Parochial Ministry Measure 1967, see PARA 731 post.

4 Church Representation Rules, r 19 (2) (c). Residence must be of a regular, not casual, nature: r 44 (5).

5 The resolution may provide for the choice by a class of such persons of some of their number to be members of the deanery synod, and for the term of office of persons so chosen: *ibid* r 20 (5) (amended by S.I. 1973 No. 1865).

6 Ibid r 19 (2) (d). As to residence, see note 4 *supra*; as to co-opted members, see *infra*; and as to representation of cathedral clergy, see PARA 530 post.

7 Ibid r 19 (3) (a) (amended by S.I. 1973 No. 1865). As to such meetings, see PARA 529 post.

8 Ibid r 19 (3) (b). If a person has his name on the rolls of two or more parishes he must choose one of those parishes for the purpose of this provision: r 1 (3) (substituted by S.I. 1973 No. 1865). As to church electoral rolls, see PARA 591 post.

9 Ibid r 19 (3) (c) (added by S.I. 1973 No. 1865). For the meaning of 'lay', see r 44 (2), and PARA 591 note 1 post. The person so chosen must be an actual communicant member of the Church of England (for the meaning of which see PARA 420 note 1 *ante*) of eighteen years or upwards: Sch. 3, r 19 (3) (c) (added by S.I. 1973 No.

1865). He is to be chosen every three years, and will hold office for a term of three years from 1st June next following the date on which he is chosen: r 20 (4) (amended by S.I. 1973 No. 1865). As to casual vacancies, see r 39 (8), (9) (amended by S.I. 1973 No. 1865), and PARA 529 note 9 post.

10 Ibid r 19 (3) (d) (amended by S.I. 1973 No. 1865). For the meaning of 'lay', see r 44 (2), and PARA 591 note 1 post. As to such a resolution of the diocesan synod, see note 5 supra; as to opted members, see infra; and as to representation of cathedral laity, see PARA 530 post.

11 Ibid r 19 (4). Those co-opted by the House of Clergy must be clerks in holy orders, and those co-opted by the House of Laity must be lay persons who are actual communicant members of the Church of England of eighteen years or upwards: r 19 (4) (amended by S.I. 1973 No. 1865).

12 Ibid r 19 (4), proviso (added by S.I. 1973 No. 1865).

13 Ie those exercisable under ibid rr 19, 20: see r 20 (6) (amended by S.I. 1973 No. 1865).

14 This includes the maximum number of members who may be co-opted: ibid r 20 (6) proviso (amended by S.I. 1973 No. 1865).

15 Ibid r 20 (6) (amended by S.I. 1973 No. 1865).

16 Ibid r 20 (6) proviso (amended by S.I. 1973 No. 1865).

UPDATE

528 Membership of deanery synods

NOTES--Rule 19 now r 24; SI 1994/3118.

TEXT AND NOTES 2-6--Head (4) now such other clerks in holy orders holding the bishop's licence to work throughout the diocese or in more than one deanery and resident in the deanery subject to any direction which may be given by the members of the House of Clergy of the bishop's council that, having regard to the number of parochial and non-parochial clergy in the deanery, such clerk must have membership of a specified deanery synod other than the deanery where he resides provided that no person is thereby a member of more than one deanery synod in the diocese: r 24(2)(d); SI 1994/3118. Add head (5) one or more clerks in holy orders holding permission to officiate in the diocese who are resident in the deanery or who have habitually attended public worship in a parish in the deanery during the preceding six months; one clerk may be elected or chosen for every ten such clerks or part thereof, elected or chosen in such manner as may be approved by the bishop by and from such clerk: r 24(2)(e) (added by SI 1980/178, substituted by SI 2004/1889). In the case of an appeal arising out of the choosing of a retired clerk in accordance with r 24(2)(e), notice of the appeal must be given in writing to the bishop: r 43(2); SI 1984/1039, SI 1994/3118. As to where an extra-parochial place is not in a deanery, see r 24(3); SI 1984/1039. For these purposes, the relevant date is 31 December in the year immediately preceding any election of the parochial representatives of the laity, and as soon as possible after that date the rural dean of the deanery must inform the bishop of the number of clerks in holy orders who are qualified for membership of the deanery synod by virtue of r 24(2)(e): r 24(4); SI 1980/178; SI 1984/1039. Not later than 1 July following the election of parochial representatives of laity to the deanery synod the secretary of the synod must send to the diocesan electoral registration officer (see PARA 511) a list of the names and addresses of the members of the house of clergy, specifying the class of membership, and must keep that officer informed of subsequent changes in membership: r 24(5); SI 1989/2094. Any such person must be chosen every three years and holds office for a term of three years beginning with 1 June next following the date on which he is so chosen: r 25(4); SI 1980/178, SI 1994/3118.

NOTE 4--Rule 44(5) renumbered: now r 54(6): SI 1980/178, SI 1994/3118.

NOTE 5--Now a direction by the appropriate members of the Bishop's Council making provision under r 24(2)(d) or r 26(6)(e) may make such provision: r 25(5); SI 1994/3118.

NOTES 7-12--Rule 19(3), (4) now r 24(6), (7) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 63(6); SI 1994/3118).

TEXT AND NOTE 8--Head (b) now also includes members of an area synod constituted in accordance with Dioceses Measure 1978 s 17: r 24(6)(b); SI 1980/178. Rule 1(3) renumbered as r 1(4): SI 1994/3118; SI 1995/3243.

NOTES 9-16--Rule 20 now r 25; SI 1994/3118.

NOTES 9, 11--For 'eighteen' read 'sixteen': r 24(6), (7) (as renumbered: see NOTES 7-12) (amended by SI 2004/1889).

TEXT AND NOTE 10--Head (d) now the deaconesses and lay workers licensed by the bishop to work in any part of the deanery: r 24(6)(d); SI 1994/3118. Add head (e) such other deaconesses or lay workers holding a bishop's licence to work throughout the diocese or in more than one deanery and resident in the deanery subject to any direction which may be given by the members of the House of Laity of the bishop's council that, having regard to the number of deaconesses or lay workers in the deanery, such person is to have membership of a specified deanery synod other than the deanery where they reside, provided that no person is thereby a member of more than one deanery synod in the diocese: r 24(6)(e); SI 1994/3118.

NOTE 11--Rule 29(2) (now r 35(3)) amended (see PARA 418). The names and addresses of co-opted members must be sent by the secretary of the deanery synod to the diocesan electoral registration officer (para 511): r 24(7); SI 1989/2094.

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529. Election of parochial representatives.

The parochial representatives¹ on deanery synods are elected by annual parochial church meetings every three years², their term of office being three years from 1st June following their election³. The numbers to be elected from the several parishes are determined by resolution of the diocesan synod and must be related to the numbers of names on the rolls of the parishes⁴. The qualifications of a person to be elected are that his name is on the roll of the parish concerned⁵; that he is an actual communicant member of the Church of England⁶; and that he is of eighteen years or upwards⁷. The registrar of a diocese is not qualified for election to a deanery synod in that diocese⁸.

A casual vacancy among the parochial representatives may be filled by the election by the parochial church council of a person qualified to be so elected⁹.

1 See PARA 528 ante.

2 Church Representation Rules, r 20 (1), contained in the Synodical Government Measure 1969, Sch. 3. As to the conduct of elections at annual parochial church meetings, see the Church Representation Rules, r 10, and PARA 566 post. The provisions respecting appeals against election results and matters connected with them are similar to those applicable to diocesan synod elections save that notice of appeal must be given to the rural dean or, if there is no rural dean, the archdeacon: see r 36 (amended by S.I. 1973 No. 1865), and cf. para 596 post. For the powers of bishops in relation to elections, see r 43 (1) (d), and PARA 389 ante.

3 Ibid r 20 (1).

4 Ibid r 20 (2) (amended by S.I. 1973 No. 1865). Provision may be made by the resolution for the separate representation of a district for which there is a district church council: r 20 (2); see also r 16 (amended by S.I. 1973 No. 1865), and PARA 565 post.

5 Ibid r 9 (1) (a) (amended by S.I. 1973 No. 1865): see PARA 566 post.

6 Ibid r 9 (1) (b) (amended by S.I. 1973 No. 1865). For the meaning of 'actual communicant member of the Church of England', see r 44 (1) (amended by S.I. 1973 No. 1865), and PARA 420 note 1 ante.

7 Ibid r 9 (1) (c) (amended by S.I. 1973 No. 1865). A person is not disqualified from being elected or chosen a member of the synod by the fact that he is also a member ex-officio: r 38 (amended by S.I. 1973 No. 1865).

8 Ibid r 9 (1) proviso (amended by S.I. 1973 No. 1865).

9 Ibid r 39 (1) (substituted by S.I. 1973 No. 1865). In other respects the election is to be conducted in the same manner as an ordinary election: r 39 (8) (amended by S.I. 1973 No. 1865). A person elected or chosen to fill a casual vacancy holds office only for the unexpired portion of the term of office of the member whom he replaces: r 39 (9) (amended by S.I. 1973 No. 1865).

UPDATE

529 Election of parochial representatives

NOTES 1-4--Rule 20 now r 25; SI 1994/3118.

NOTE 2--Rule 43(1)(d) omitted: SI 1989/2094.

NOTE 4--Provision as to separate representation of a district for which there is a district church revoked; the resolution must not make it possible for a parish with fewer than

26 names on the roll to have more than one representative: r 25(2) (amended by SI 1994/3118, SI 2004/1889).

TEXT AND NOTES 5-8--Rule 9(1) renumbered and substituted: see PARA 566.

NOTE 7--Rule 38 now r 47; SI 1994/3118.

TEXT AND NOTE 9--Rule 39 now r 48; SI 1994/3118. Casual vacancies must be filled as soon as practicable after the vacancy has occurred. Where the annual parochial church meeting is not due to be held within the next two months of the occurrence of the vacancy, (i) a vacancy among the parochial representatives elected to the parochial church council may be filled, and (ii) a vacancy among the parochial representatives elected to the deanery synod must be filled, by the election by the parochial church council of a person qualified to be so elected. Returns of parochial representatives of the laity elected to fill one or more casual vacancies on the deanery synod must be sent by the secretary of the parochial church council to the diocesan electoral registration officer and to the secretary of the deanery synod: r 48(1); SI 1989/2094. For the meaning of 'casual vacancy', see PARA 425.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(ii) Deanery Synods/A. CONSTITUTION AND MEMBERSHIP/530. Variation of membership by scheme.

530. Variation of membership by scheme.

If it appears that the foregoing provisions relating to membership of deanery synods ought to be varied to meet the special circumstances of the diocese or the deaneries and to secure better representation of clergy or

laity, or both, the diocesan synod may make a scheme for the appropriate variation¹. Every such scheme requires the assent of the bishop and of a two-thirds majority of the members of each House of the diocesan synod present and voting², and it must thereafter be laid before a session of the General Synod³. If not annulled by resolution of the General Synod the scheme will come into operation on the prescribed or specified date³, and the relevant provisions of the Church Representation Rules will then have effect subject to the scheme⁴.

The diocesan synod may also provide by scheme for the representation on a deanery synod⁵ of the dean or provost, the residentiary canons and other ministers of the cathedral church of the diocese or any of them ⁶, and of lay persons who in a parish church cathedral are on the electoral roll of the parish⁷, or in any other cathedral are declared by the dean to be habitual worshippers at the cathedral and whose names are not entered on the roll of any parish⁸. Every such scheme requires the assent of the bishop and of a two-thirds majority of the members of each House of the diocesan synod present and voting⁹.

1 1 Church Representation Rules, r 21 (1), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 21 (2). Copies of the scheme must be sent to members of the diocesan synod at least fourteen days before the session at which it is to be considered: r 21 (2).

3 Ibid r 21 (3).

4 Ibid r 21 (1).

5 The deanery synods to which the scheme is to apply may be determined under the scheme: ibid r 22 (1).

6 Ibid r 22 (1) (a).

7 Ibid r 22 (1) (b) (i).

8 Ibid r 22 (1) (b) (ii).

9 Ibid r 21 (2), 22 (2). Copies of the scheme must be sent to members of the diocesan synod at least fourteen days before the session at which it is to be considered: rr 21 (2), 22 (2).

UPDATE

530 Variation of membership by scheme

NOTES--Rules 21, 22 now rr 26, 27 (r 27 amended by the Cathedrals Measure 1999 s 39(1), Sch 2 para 8; SI 1994/3118; SI 2004/1889).

TEXT AND NOTES 2, 3--Rule 26(2), (3) now r 26(2)-(5); SI 1980/178; see PARA 503.

TEXT AND NOTE 9--Rule 26(2) (as renumbered) amended by SI 1980/178; see PARA 503.

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531. Vacation of seat on deanery synod.

A member of a deanery synod may resign his membership by notice in writing to the secretary of the synod¹. Where a lay member who is a parochial representative or who represents the cathedral laity² ceases to be entered on the roll of the parish by which he was elected or, as the case may be, to be declared a habitual worshipper at the cathedral, his seat is forthwith vacated³, but this provision will not apply to a person whose name is entered on the roll of any other parish in the diocese or who is declared to be a habitual worshipper at the cathedral⁴. A person is not deemed to vacate his seat as an elected or chosen member by reason only of the fact that subsequently to his election or choice he has become a member of the synod ex officio⁵.

1 Church Representation Rules, r 40, contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865).

2 See the Church Representation Rules, r 22, and PARA 530 ante.

3 Ibid r 37 (1) (a) (amended by S.I. 1973 No. 1865).

4 Ibid r 37 (2) (added by S.I. 1973 No. 1865).

5 Ibid r 38 (amended by S.I. 1973 No. 1865).

UPDATE

531 Vacation of seat on deanery synod

NOTES--Rules 37, 38, 40 now rr 46, 47, 49; SI 1994/3118.

NOTE 3, 4--Church Representation Rules r 46(1), (2) amended: SI 2004/1889.

TEXT AND NOTE 4--This provision will not apply to such a person if, before the vacancy occurs, the parochial church council so resolve: r 46(2) (amended by SI 1984/1039, SI 2004/1889).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(ii) Deanery Synods/B. FUNCTIONS AND PROCEEDINGS OF DEANERY SYNODS/532. Functions of deanery synods.

B. FUNCTIONS AND PROCEEDINGS OF DEANERY SYNODS

532. Functions of deanery synods.

The functions of a deanery synod are (1) to consider matters concerning the Church of England and to make provision for such matters in relation to their deanery, and to consider and express their opinion on any other matters of religious or public interest¹; (2) to bring together the views of the parishes of the deanery on common problems, to discuss and formulate common policies on those problems, to foster a sense of community and interdependence among those parishes, and generally to promote in the deanery the whole mission of the Church, pastoral, evangelistic, social and ecumenical²; (3) to make known and so far as appropriate put into effect any provision made by the diocesan synod³; (4) to consider the business of the diocesan synod, and particularly any matters referred to that synod by the General Synod, and to sound parochial opinion whenever it is required or considers it appropriate to do so⁴; and (5) to raise such matters as the deanery synod considers appropriate with the diocesan synod⁵.

If the diocesan synod delegates to deanery synods functions in relation to the parishes of its deaneries, and in particular the determination of parochial shares in quotas⁶ allocated to the deaneries, the deanery synod must exercise those functions⁷. The General Synod may by canon or regulation extend, amend or further define the functions of deanery synods⁸.

The deanery synod may be required to elect members to the diocesan board of finance⁹. The House of Clergy and the House of Laity of the deanery synod are required to elect members to the corresponding Houses of the diocesan synod¹⁰. The members of the House of Laity of the deanery synod are diocesan electors for the purpose of electing members to the House of Laity of the General Synod¹¹.

1 Synodical Government Measure 1969, s 5 (3) (a). However, these functions do not include the issue of any statement purporting to declare the doctrine of the Church on any question: s 5 (3) proviso.

2 Ibid s 5 (3) (b).

3 Ibid s 5 (3) (c).

4 Ibid s 5 (3) (d).

5 Ibid s 5 (3) (e).

6 'Quota' means an amount to be subscribed to the expenditure authorised by diocesan synods: ibid s 5 (4).

7 Ibid s 5 (4).

8 Ibid s 5 (5).

9 Diocesan Boards of Finance Measure 1925, s 1 (2) (d); Synodical Government Measure 1969, ss 4 (7), 5 (2): see PARA 517 ante.

10 Church Representation Rules, rr 24 (2) (b), (3) (b), 25, contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865): see pares. 505, 506 ante.

11 Church Representation Rules, r 29 (2) (amended by S.I. 1973 No. 1865).

UPDATE

532 Functions of deanery synods

TEXT AND NOTE 11--Rule 35(3) (formerly r 29(2)) amended: SI 1989/2094, SI 1989/2095, SI 1994/3118. As to diocesan electors of the diocese in Europe, see r 35(4); Diocese in Europe Measure 1980 s 2, Sch 2, and PARA 418.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(8) RURAL DEANERIES/(ii) Deanery Synods/B. FUNCTIONS AND PROCEEDINGS OF DEANERY SYNODS/533. Meetings and procedure.

533. Meetings and procedure.

The diocesan synod is required to make rules for deanery synods; these must include certain specified provisions by virtue of which the following requirements will have effect¹.

The rural dean and a member of the House of Laity are to be joint chairmen of the deanery synod², and there must be a secretary of the synod³. A specified number of meetings must be held in each year⁴. On such matters and in such circumstances as the rules may specify voting must be by Houses; otherwise decisions are to be taken by a majority of the members present and voting⁵. There must be a standing committee of the synod⁶. A report of the synod's proceedings must be prepared and circulated to all parochial church councils in the deanery⁷.

Subject to the rules made by the diocesan synod the deanery synod has powers to determine its own procedure⁸.

1 Church Representation Rules, r 23 (1), contained in the Synodical Government Measure 1969, Sch. 3. The rules may provide for such other matters consistent with the Church Representation Rules as the diocesan synod thinks fit: r 23 (1).

2 Ibid r 23 (1) (a); see also the Revised Canons Ecclesiastical, Canon C23 para 4 (amended by Amending Canon No. 1).

3 Church Representation Rules, r 23 (1) (b).

4 Ibid r 23 (1) (c).

5 Ibid r 23 (1) (d).

6 Ibid r 23 (1) (e). The committee will have such membership and functions as the rules made by the diocesan synod may provide: r 23 (1) (e).

7 Ibid r 23 (1) (f).

8 Ibid r 23 (2).

UPDATE

533 Meetings and procedure

TEXT AND NOTES--Rule 23 now r 28; SI 1994/3118. A diocesan electoral registration officer is to be appointed in every diocese: r 29, see PARA 511.

TEXT AND NOTE 2--They must agree between them who is to chair each meeting of the synod or particular items of business on the agenda of the synod: r 28(1)(a); SI 1984/1039.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/534. Meaning of 'parish'.

(9) PARISHES

(i) Origin and Development of the Parochial System

534. Meaning of 'parish'.

According to the general definition of the term an ecclesiastical parish is a district committed to the charge of one incumbent having the cure of souls in it¹. For certain purposes, however, a special statutory definition may be applicable. Thus, in the Church Representation Rules 'Parish' is defined as including also a district which is constituted a conventional district² for the cure of souls and has a separate curate licensed to it³. In the Pastoral Measure 1968 'parish' means a parish constituted for ecclesiastical purposes, and does not include a conventional district⁴.

1 1 Bl Com (14th Edn) 110.

2 As to conventional districts, see PARA 540 post.

3 Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3. See also the Parochial Church Councils (Powers) Measure 1956, s 1, and the Churchwardens (Appointment and Resignation) Measure 1964, s 13, which applied the corresponding definition in the Rules for the Representation of the Laity (now superseded by the Church Representation Rules).

4 Pastoral Measure 1968, s 89 (1). As to conventional districts, see PARA 540 post.

UPDATE

534 Meaning of 'parish'

TEXT AND NOTE 3--Rule 44 now r 54; SI 1994/3118. Words 'and has a separate curate licensed to it' revoked: SI 1980/178. In relation to the Diocese in Europe, a chaplaincy which is constituted as part of the diocese is also included in the definition: r 54(1); SI 1998/319; Synodical Government (Amendment) Measure 2003 Schedule para 8.

NOTE 3--1964 Measure s 13 now the Churchwardens Measure 2001 s 13(1) which applies the definition in the Church Representation Rules r 54(1).

TEXT AND NOTE 4--Consolidated in Pastoral Measure 1983; see s 86(1) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 17).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/535. Ancient parishes.

535. Ancient parishes.

The ancient parishes appear to have been gradually formed between the seventh and twelfth or thirteenth centuries¹. Their boundaries seem to have been originally identical with or determined by those of manors, as a manor very seldom extends over more than one of these parishes, although in many cases one parish contains two or more manors². Besides being ecclesiastical units, ancient parishes have been at different periods, and in many cases still are, administrative areas for various civil purposes, although the boundaries of parishes for civil purposes³ have in many cases been altered under statutory authority.

1 Parishes were instituted for the ease and benefit of the people, and not of the parson: *Britton v Standish* (1704) Holt KB 141. Originally there was simply the diocese, which was called 'parochia', and the bishop was the sole parson and had the sole cure of souls throughout the diocese. In course of time the diocese was divided ecclesiastically into several districts, and ministers, ordained by the bishop to assist him, were sent out to serve the cure and preach in the districts assigned to them by the bishop for the purpose; they and the bishop resided together in the place where the church or cathedral was. When churches were founded and endowed districts were annexed to them and clergy were sent to reside and officiate in these churches and in the annexed districts, which became parishes. The bishop, however, reserved a certain number (now called the dean and prebendaries or canons) in his cathedral to counsel and assist him. The cathedral continued, as before, to be the parish church of the whole diocese. The bishop remained chief pastor or universal incumbent of the diocese, having the cure of souls there and in all its parishes, and he had, therefore, the right of instituting or collating clerks to the parishes. The instituted or collated clerks received the cure of souls in their parishes from him and as his assistants, and they were for a long time called 'curates': *Bishop of Down v Miller* (1861) 11 I Ch R App 1 at vii, viii, per Dr Radcliffe. Gradually, as more churches were built, the ministrations of the church became more localised, and partly by the deliberate acts of the bishop and those serving under him, partly by the allocation by the monasteries of particular districts to be served by individual members of their number, and partly by agreement between great nobles and ecclesiastical authorities, smaller ecclesiastical districts were formed and the parochial system was evolved: 1 BI Com (14th Edn) 112. The fact that the vicar of a parish received the vicarial tithe arising in a chapelry, and that residents in a parish are in the habit of being married in the parish church, is almost conclusive evidence that the chapelry is part of the parish: *Re Sandbach School and Almshouse Foundation, A-G v Earl of Crewe* [1901] 2 Ch 317.

2 1 BI Com (14th Edn) 112. There have, in consequence, been many instances of an isolated portion of an ancient parish separated from the rest by other parishes and even sometimes situate in the midst of another parish.

3 As to parishes for civil purposes, see the Local Government Act 1972, s 1(6), and LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/536. Extra-parochial areas.

536. Extra-parochial areas.

In the ancient division of the country into parishes certain areas were for unknown reasons left extra-parochial¹. In many cases these have been united with adjoining parishes for ecclesiastical purposes². Where that has not been done the bishop is empowered to authorise the publication of banns and solemnisation of marriages in any church or chapel belonging to or situate within the area and, where this authority is given, marriage registers are to be kept in the church or chapel as if it were a parish church³. Provision may be made by pastoral scheme for the creation of new extra-parochial places, or for the incorporation in parishes of existing extra-parochial places, and by pastoral scheme or order for the alteration or definition of the boundaries of existing extra-parochial places⁴. With the consent of the diocesan bishop a military or air force station may by Order in Council be created an extra-parochial district for ecclesiastical purposes with an extra-parochial chapel under the charge of an army or air force chaplain⁵.

1 1 BI Com (14th Edn) 113. Extra-parochial places have been dealt with for civil purposes by modern legislation, and have in many cases been united for those purposes to adjoining parishes: see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

2 See PARA 856 et seq post.

3 Marriage Act 1949, ss 21, 54 (1), 59; Registration Service Act 1953, s 23 (2), Sch. 2; Sharing of Church Buildings Act 1969, s 6 (4). See also the Marriage Act 1949, ss 6 (2), (3), 15 (2).

4 Pastoral Measure 1968, ss 16 (1) (d), 38 (a): see PARA 864 post.

5 Army Chaplains Act 1868, s 4. By Order in Council, which may at any time be revoked, the district may be placed under the exclusive jurisdiction of the archbishop or bishop named in the order: s 9. The Act was extended to the air force by the Air Force (Application of Enactments) (No. 2) Order 1918, S.R. & O. 1918 No. 548: see PARA 730 ante.

UPDATE

536 Extra-parochial areas

NOTE 5--1868 Act s 4 amended: Patronage (Benefices) Measure 1986 s 34(4), Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/537. New ecclesiastical parishes.

537. New ecclesiastical parishes.

To meet the needs arising from the increase and movement of population the creation of new ecclesiastical parishes became necessary, and this required statutory authority. In some cases the process was effected by a local or special Act of Parliament¹, but after the passing of the Church Building Act 1818², the New Parishes Act 1843³ and many Acts amending them, the process was generally carried out by an Order in Council⁴ ratifying a scheme of the Church Building Commissioners⁵. By the New Parishes Measure 1943 the existing body of legislation was in the main repealed and re-enacted with amendments. The present code of law on the subject is contained in the Pastoral Measure 1968, which enables new parishes to be created by means of pastoral schemes made by the Church Commissioners and confirmed by Order in Council⁶, and which also makes provision for the dissolution of existing parishes, for the alteration of their areas, and for the definition of their boundaries⁷.

1 Eg the Parish of Manchester Division Act 1850; Parish of Manchester Division Act 1850 (Amendment) Measure 1926.

2 The Church Building Act 1818 (repealed) was the first of a series of Acts known as the Church Building Acts 1818 to 1884 (now mainly repealed), under which churches were built and districts assigned.

3 The New Parishes Act 1843 (repealed except for s 6) was the first of a series of Acts known as the New Parishes Acts 1843 to 1884 (now mainly repealed), under which new districts were created and ministers appointed, and latterly churches were provided.

4 See *Fitzgerald v Fitzpatrick* (1864) 4 New Rep 87 (Order in Council constituting district chapelry withdrew chapel from all purposes included in a trust deed which had regulated its administration).

5 After 1865 these became the Ecclesiastical Commissioners (Church Building Commissioners (Transfer of Powers) Act 1856 (repealed)), and are now the Church Commissioners (see PARA 362 et seq ante).

6 Pastoral Measure 1968, s 16: see PARA 856 et seq post. See also s 86, by virtue of which all districts constituted for ecclesiastical purposes by or under any Act or Measure, and all other districts constituted for ecclesiastical purposes, the minister of which has a separate cure of souls, are (with effect from 1st April 1969) parishes with full parochial status. This provision does not, however, extend to conventional districts: see PARA 540 post.

7 Ibid s 16 (1) (b), (c): see PARA 864 post. Where a part of a parish in which there is no church used for public worship is wholly surrounded by another parish the bishop may, after consultation with the pastoral committee and with the consents of the interested parties, submit of his own motion to the Church Commissioners proposals for including that part in the other parish: s 13 (4).

UPDATE

537 New ecclesiastical parishes

TEXT AND NOTES 6, 7--Consolidated in Pastoral Measure 1983; see s 17.

NOTE 7--1968 Measure s 13(4) repealed: Pastoral (Amendment) Measure 1982 s 12(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/538. Provisions relating to parish churches.

538. Provisions relating to parish churches.

Where a pastoral scheme creates a new parish or alters a parish¹, then (1) if there is one existing parish church² in the parish so created or altered, that church will be the parish church, unless the scheme designates another church as the parish church³; (2) if there are two or more existing parish churches in the parish so created or altered, the scheme may provide that the parish shall have more than one church with the status of a parish church, and the scheme must designate the church or churches which will have this status (the choice not being limited to the existing parish churches)⁴; (3) if there is no existing parish church in the parish so created or altered, but the Church Commissioners have already approved a church in the parish as suitable to be a parish church, that church will, on the coming into operation of the scheme or on its consecration (whichever last occurs), become the parish church⁵.

A pastoral scheme or order may substitute for a parish church of any parish another church situated in that parish which has been approved by the commissioners as suitable to be a parish church, whether or not the parish is otherwise affected by the scheme or order⁶.

1 See PARA 537 ante.

2 'Existing parish church' means a church which, immediately before the scheme comes into operation, is a parish church and is not declared redundant by the scheme: Pastoral Measure 1968, s 27 (1).

3 Ibid s 27 (1) (a).

4 Ibid s 27 (1) (b). Where by virtue of such a designation a parish has more than one parish church, then (1) the parishioners have the same rights of worship in each of the parish churches; (2) marriages may be solemnised in any of the parish churches, and the bishop may give directions (see the Marriage Act 1949, s 23; Pastoral Measure 1968, Sch. 3 para 14 (3)) as to where banns are to be published and marriages solemnised; (3) burial rights are not affected by the designation (but are governed by Sch. 3 para 15); (4) the powers, duties and liabilities of the parochial church council of the parish extend to each of the parish churches; (5) two churchwardens are to be appointed for each of the parish churches (the Churchwardens (Appointment and Resignation) Measure 1964 applies to each pair separately), but they will all be churchwardens of the whole parish, except insofar as they arrange to perform separate duties in relation to the separate parish churches; and the pastoral scheme may make such other adaptations or modifications of enactments or Measures relating to parish churches (including the foregoing provisions) as may be necessary or expedient: Pastoral Measure 1968, s 27 (3).

5 Ibid s 27 (1) (c). In any church designated by a pastoral scheme as a parish church or becoming a parish church under s 27, it is lawful to publish banns and solemnise marriages and to perform all other offices which may be performed in parish church; and a pastoral scheme may provide certain specified matters (ie transfer of registers or other documents and determination of claims to sittings etc.): s 27 (6).

6 Ibid ss 27 (4), 38 (h). If the bishop is of opinion that proposals should be submitted to the commissioners for the substitution for a parish church of some other church in the parish approved by them as suitable for a parish church, or for altering the name of any benefice or parish, being proposals which could be implemented under Part II (ss. 16-41) by pastoral order, and is satisfied, after consulting the pastoral committee and any parochial church councils affected that no other interested party would be likely to object, he may of his own motion formulate and submit such proposals, which have effect as if they had been submitted under s 3 (6) (see PARA 878 post): s 13 (5). As to pastoral schemes and orders, see PARA 856 et seq post; and as to provision for a new church by pastoral scheme, see PARA 856 post.

UPDATE

538 Provisions relating to parish churches

TEXT AND NOTES--Consolidated, with amendments, in Pastoral Measure 1983; see generally s 27.

TEXT AND NOTES 1-5--Now a pastoral scheme may, in relation to any parish, including a new parish to be created by the scheme or a parish the area of which is to be altered thereby (1) designate as the parish church or as an additional parish church, or as parish churches or additional parish churches, any church or churches in the parish; (2) provide for a church in the parish which immediately before the scheme comes into operation is a parish church to cease to be a parish church; (3) provide for a new church and for it to become, after its approval by the bishop, after consultation with the diocesan advisory committee and the pastoral committee, as suitable to be a parish church and its consecration, the parish church, or an additional parish church, of the parish either in substitution for an existing parish church or otherwise; (4) require the bishop to notify the commissioners of his approval of a building or church as suitable to be a parish church and of its consecration: 1983 Measure s 27(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 3).

The powers referred to above are also exercisable by pastoral order: s 37(1)(g), as renumbered by Team and Group Ministries Measure 1995 s 5.

The designation by a pastoral scheme as a parish church of a building which immediately before the scheme comes into operation is not a parish church will not take effect unless and until it has been approved by the bishop, after consultation with the diocesan advisory committee and the pastoral committee, as suitable to be a parish church and, if necessary, the building has been consecrated: 1983 Measure s 27(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 3).

If the area of a parish is altered by a pastoral scheme but no provision with respect to the churches in that area is made by the scheme, every church in that area will have the same status on and after the date on which the scheme comes into operation as it had immediately before that date: 1983 Measure s 27(3).

NOTE 4--These provisions, other than head (5), now apply where by virtue of a designation made by a pastoral scheme or otherwise a parish has more than one parish church: *ibid* s 27(5) (amended by the Churchwardens Measure 2001 s 15(2), Sch 3). The scheme may also make such adaptations or modifications of enactments or Measures relating to churchwardens as may be necessary or expedient: 1983 Measure s 27(5) (as amended).

TEXT AND NOTE 6--Repealed: Pastoral (Amendment) Measure 1982 ss 12(3), 20(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/539. Parishes without parish churches.

539. Parishes without parish churches.

In the event of a parish having no parish church¹ the bishop must make provision for public worship according to the rites and ceremonies of the Church of England by licensing one or more buildings or parts of buildings for such worship², and he may designate any building or parts of a building so licensed as the parish centre of worship³. For the purposes of the law of marriage and for other legal requirements affecting parish churches a building or part of a building so designated is deemed to be the parish church⁴.

Where, in a parish which has no parish church, a church is approved by the Church Commissioners as suitable to be a parish church and is consecrated, it becomes the parish church of that parish⁵. A pastoral scheme may provide for a new church, and, after its approval by the commissioners as suitable for a parish church and its consecration, for it to become the parish church either in substitution for an existing parish church or otherwise⁶.

1 See the Pastoral Measure 1968, s 16 (4), which enables provision to be made by pastoral scheme for the creation of a new parish with full parochial status notwithstanding that the parish so created will have no parish church when the provision comes into operation; see also PARA 864 post. Another situation in which a parish may exist without a parish church is where the parish church has been declared redundant: see s 28 (2), and PARA 1119 post.

2 Ibid s 29 (1).

3 Ibid s 29 (2). Any such designation is revocable (s. 29 (3)). The designation or revocation must be under seal and registered in the diocesan registry, and public notice of it must be given in the local press: s 29 (4).

4 Ibid s 29 (2): see PARA 1006 post. The parties to a marriage are, however, given the option of recourse to the parish church of an adjoining parish: s 29 (2) proviso (a); and see the Marriage Act 1949, ss 6 (3), 15 (2). Designation of a building or part of a building under the Pastoral Measure 1968, s 29 (2), does not make it subject to the faculty jurisdiction, but the bishop may, under the Faculty Jurisdiction Measure 1964, s 6, direct that it shall be so subject: Pastoral Measure 1968, s 29 (2) proviso (b); see PARA 1309 post.

5 Ibid s 27 (2). As to consequential matters (marriages, custody of register, claims to sittings etc.), see s 27 (6).

6 Ibid s 27 (5).

UPDATE

539 Parishes without parish churches

TEXT AND NOTES 1-4--Consolidated, with amendments, in Pastoral Measure 1983; see s 29.

Where a parish has no church, the bishop must make provision for public worship according to the rites and ceremonies of the Church of England by licensing one or more buildings or parts of buildings for such worship: 1983 Measure s 29(1); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 19. He may designate any church in the parish, other than a parish church, or any building or part of a building licensed for public worship in any parish, as a parish centre of worship and thereupon, but subject to s 29(3), (4), for the purposes of the Marriage Act 1949 and 1983 Measure Sch 3 para 14, any other enactment, provision of a Measure (including

the 1983 Measure), rule or law requiring or authorising any service or ceremony to be held or notices to be affixed or other thing done in or at the parish church or a parish church, a church building or part of a building so designated is deemed, while the designation is in force, to be a parish church: 1983 Measure s 29(2) (amended by the Churchwardens Measure 2001 s 15(2), Sch 3).

Where a church, building or part of a building in a parish has been so designated and the parish has no parish church, then, if the persons to be married so elect, they may proceed under Marriage Act 1949 ss 6, 15 as if the church, building or part had not been so designated; and these provisions have effect notwithstanding that there is in the parish a church or chapel licensed for marriages or a church or chapel in which divine service is usually solemnised every Sunday: 1983 Measure s 29(3). A building or part of a building so designated is not by virtue only of the designation subject to the faculty jurisdiction, but without prejudice to the power of the bishop under Faculty Jurisdiction Measure 1964 s 6 to direct that it is to be so subject: 1983 Measure s 29(4).

A designation under these provisions may be revoked by the bishop, but without prejudice to the continuation in force of any licence thereunder, if the bishop thinks fit: s 29(5). Any such designation or revocation must be under seal and registered in the registry of the diocese, and the registrar of the diocese must give public notice of it in one or more newspapers circulating in the locality: s 29(6).

NOTE 5--Now *ibid* s 27(4), (6)-(8).

TEXT AND NOTE 6--See now *ibid* s 27(1) (see PARA 538).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(i) Origin and Development of the Parochial System/540. Conventional districts.

540. Conventional districts.

A conventional district is not a parish, but is an area placed, by agreement between the incumbent or incumbents of the parish or parishes in which the district is situated and the bishop, under the care of a curate in charge, licensed by the bishop, who is responsible for the care of souls in the district¹. The arrangement requires renewal with every change of incumbency in the parish or parishes. Conventional districts are normally formed, often as a result of housing development, in anticipation of their subsequently becoming new parishes. The parishioners remain parishioners of the original parish or parishes, although the bishop may license a chapel in the district for marriages of persons residing in the district², and the annual parochial church meeting or meetings may make a scheme for the election of a district church council for the district³. In the Pastoral Measure 1968 'Parish' does not include a conventional district⁴, but 'parish' in the Church Representation Rules does include a conventional district; and consequently it can have churchwardens⁵, and may have its own parochial church council separate from that of the parish to which it belongs⁷.

1 See Opinions of the Legal Board (5th Edn 1973) III/38.

2 Marriage Act 1949, s 20: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

3 Church Representation Rules, r 16 (1) (b), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

4 Pastoral Measure 1968, s 89 (1). See also s 86.

5 Church Representation Rules, r 44 (1): see PARA 534 ante.

6 See the Churchwardens (Appointment and Resignation) Measure 1964, s 1. This is because, by s 13, 'parish' in that Measure has the same meaning as in the Representation of the Laity Rules which the Church Representation Rules replace.

7 See PARA 568 post.

UPDATE

540 Conventional districts

TEXT AND NOTES--It is the duty of the diocesan pastoral committee, from time to time as may be directed by the bishop, and at least every five years, to review the arrangements for pastoral supervision in each conventional district in the diocese, and in cases where it considers it desirable, to make recommendations to the bishop in accordance with the Pastoral Measure 1983 s 3 (see PARA 862) for any matters for which provision may be made under that Measure (except s 36) by a pastoral scheme or pastoral order: s 2A (added by the Synodical Government (Amendment) Measure 2003 s 2(2)).

TEXT AND NOTE 3--Rule 16 now r 18; SI 1994/3118. Now a scheme for the election by the annual meeting for any district in the parish in which a church or place of worship is situated of a district church council for that district: r 18(1)(b); SI 1981/959.

TEXT AND NOTE 4--Consolidated in Pastoral Measure 1983; see s 86(1).

NOTE 6--1964 Measure now the Churchwardens Measure 2001 which provides, in s 13(1), that 'parish' has the same meaning as in the Church Representation Rules.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(ii) Incumbents/541. Office and functions of the incumbent.

(ii) Incumbents

541. Office and functions of the incumbent.

The incumbent of the parish is the clergyman holding the church and its benefice¹ and having, under the bishop, the sole and exclusive cure of souls in the parish².

The incumbent is the proper custodian of the keys of the church³ and of the register books⁴, and has a general control over the church, including the vestry⁵, and over the music⁶ and the ringing of the bells⁷. Other powers and duties are referred to elsewhere in this title⁸.

1 For the meaning of 'benefice', see PARA 768 note 1 post; and as to beneficed clergy generally, see PARA 689 et seq post.

2 See PARA 535 note 1 ante, 690 post. 'Incumbent' is derived from the Latin verb 'incumbo' in the sense of being diligently resident: Co Litt 119b. For the relations between the incumbent and the parochial church council, see PARA 574 post.

3 *Lee v Matthews* (1830) 3 Hag Ecc 169 at 173; *Daunt v Crocker* (1867) LR 2 A & E 41. As to the churchwardens' right of access to the church, see PARA 553 post.

4 *R v Cumley, ex parte Holloway* (1855) 3 WR 247.

5 *Jackson v Courtenay* (1857) 8 E & B 8; *R v O'Neill, ex parte Oliver* (1867) 31 JP Jo 742.

6 See PARAS 560, 947 post.

7 *Harrison v Forbes and Sisson* (1860) 6 Jur NS 1353; *Redhead v Wait* (1862) 6 LT 580.

8 See eg paras 951, 981 post (collections) PARAS 666, 691 post (authority to officiate) PARA 692 post (duty as to residence) PARA 943 post (duty to perform divine service) PARA 698 post (general duties), and PARA 794 post (right of patronage). As to the procedure in case of an incumbent's disability, see PARA 733 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/A. APPOINTMENT AND TENURE OF OFFICE/542. The office of churchwarden.

(iii) Churchwardens

A. APPOINTMENT AND TENURE OF OFFICE

542. The office of churchwarden.

The office of churchwarden is of ancient origin. Its functions formerly extended into the sphere of civil administration, and in ancient parishes church membership was not an essential qualification¹. The office is now, for practical purposes, a purely ecclesiastical one, and the holder of it must normally be a communicant member of the Church of England²; but some vestige of the churchwardens' role as representatives of the general body of parishioners is to be found in the provision that persons resident in the parish who are local government electors are entitled to take part in the choosing of churchwardens³. It was formerly the legal duty of any householder who was not disqualified or exempted to serve as churchwarden if appointed, but a person may not be chosen as a churchwarden today unless he has signified his consent to serve⁴.

The number, qualifications, appointment and tenure of office of churchwardens are largely governed by the Churchwardens (Appointment and Resignation) Measure 1964⁵. The Measure contains, however, certain saving provisions⁶, in particular as to existing customs regulating the number of churchwardens or the manner in which they are chosen⁷.

1 See Phillimore, *Ecclesiastical Law* (2nd Edn) 1463 et seq.

2 See PARA 543 post.

3 See PARA 545 post.

4 See PARA 543 post.

5 The Churchwardens (Appointment and Resignation) Measure 1964 (which has been amended by the Church Representation Rules, r 11 (2), contained in the Synodical Government Measure 1969, Sch. 3) does not, except for the provision requiring churchwardens to be actual communicant members of the Church of England, apply to the churchwardens of the Guild Churches in the City of London: see the Churchwardens (Appointment and Resignation) Measure 1964, s 10, and PARA 605 post. The Measure does not extend to the Channel Islands or to the Isle of Man unless special provision is made under the Channel Islands (Church Legislation) Measures 1931 and 1957 or by Act of Tynwald, as the case may be: Churchwardens (Appointment and Resignation) Measure 1964, s 15 (2); and see PARAS 388, 402 ante. As to misconduct by churchwardens, see PARA 547 post.

6 See *ibid* s 12, which includes a provision that, save in the case of Guild Churches (see note 5 supra), nothing in the Measure shall be deemed to amend, repeal or affect any local Act or any scheme made under any enactment affecting the churchwardens of a parish (s. 12 (1)); but for the purposes of the Measure, the Parish of Manchester Division Act 1850 is deemed to be a general Act: Churchwardens (Appointment and Resignation) Measure 1964, s 12 (1) proviso.

7 *Ibid* s 12 (2); and see PARA 543 note 1 post, and 544 note 3 post. 'Existing custom' means a custom existing at the commencement of the Measure (27th February 1964) which has continued for a period including the last forty years before that date: s 13. Such customs are special in each case and require to be clearly proved: *R v Cough* (1848) 3 New Mag Cas 47; and see CUSTOM AND USAGE vol 12(1) (Reissue) PARAS 626-628; CIVIL PROCEDURE vol 11 (2009) PARAS 780-781. Customs concerning the number of churchwardens are illustrated by *R v Hinckley Inhabitants* (1810) 12 East 361 at 365; *R v Earl Shilton Inhabitants* (1818) 1 B & Ald 275; *R v Catesby Inhabitants* (1824) 2 B & C 814 (one churchwarden only); *R v Marsh* (1836) 5 Ad & El 468; *Bremner v Hull* (1866) LR 1 CP 748; *Vicar of St Sepulchre v Churchwardens of St Sepulchre* (1879) 5 PD 64 (more than two churchwardens). Customs concerning the manner of appointment were considered in *Hubbard v Penrice* (1746)

2 Stra 1246; *Evelin's Case* (1639) Cro Car 551 (parishioners elect both churchwardens); *R v Rice* (1697) 1 Ld Raym 138 (general custom in the City of London that parishioners elect both churchwardens); *R v Churchwardens of St James, Westminster* (1836) 5 Ad & El 391; *Gibbs v Flight* (1846) 3 CB 581 (select vestry elects churchwardens); *Gibbs v Flight* supra (annual election of one churchwarden, who retains office for a second year as senior churchwarden); *Catten v Barwick* (1719) 1 Stra 145 (one churchwarden chosen by the minister, the other by the outgoing churchwardens); *Astle v Thomas* (1823) 2 B & C 271; *R v Marsh* supra; *Bremner v Hull* supra; *Green v R* (1876) 1 App Cas 513, HL; *Vicar of St Sepulchre v Churchwardens of St Sepulchre* supra (where a parish is divided into townships there are separate churchwardens for each township).

UPDATE

542 The office of churchwarden

TEXT AND NOTES 5-7--Churchwardens (Appointment and Resignation) Measure 1964 replaced: Churchwardens Measure 2001.

NOTE 5--1964 Measures 10 now the 2001 Measure s 9, which defines for these purposes 'actual communicant member of the Church of England' as a member of the Church of England who is confirmed or ready and desirous of being confirmed and has received Communion according to the use of the Church of England at least three times during the twelve months preceding the date of his election or appointment. 1964 Measure s 15(2) now the 2001 Measure s 16(3).

NOTE 6--1964 Measure s 12(1) now the 2001 Measure s 11(1).

NOTE 7--1964 Measure s 12(2) now the 2001 Measure s 11(2) which applies subject to the following provisions. A meeting of the parishioners of the parish may pass a resolution abolishing any existing custom which regulates the number of church wardens of the parish or the manner in which the churchwardens of the parish are chosen: s 12(1). Where any such resolution is passed, the existing custom to which it relates ceases to have effect on the date on which the next meeting of parishioners by which the churchwardens are to be elected is held: s 12(2). In the case of an existing custom which involves a person other than the minister in the choice of the churchwardens, a resolution passed under s 12(1) must not be passed without the written consent of that person: s 12(3). 'Existing custom' now means a custom existing at the coming into force of the Measure (1 January 2002) which has continued for a period commencing before 1 January 1925: s 13(1). For the meaning of 'minister' see PARA 544 NOTE 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/A. APPOINTMENT AND TENURE OF OFFICE/543. Number and qualifications of churchwardens.

543. Number and qualifications of churchwardens.

There must normally be two¹ churchwardens of every parish². They must be chosen from persons who are resident³ in the parish or whose names are on the church electoral roll of the parish⁴, and they must be actual communicant members of the Church of England⁵ except where the bishop otherwise permits, and of twenty-one years of age and upwards⁶. No person may be chosen as a churchwarden unless he has signified his consent to serve⁷.

Several categories of disqualified persons have been recognised in the past, and the existing law on this subject has remained unaffected by recent legislation⁸. Aliens are, it seems, still disqualified⁹; probably also Jews¹⁰, and possibly persons convicted of certain offences¹¹.

1 In the case of a particular parish this is, however, subject to any existing custom which regulates the number of churchwardens: (Appointment and Resignation) Measure 1964, s 12 (2); and see PARA 542 note 7 ante. Another exception occurs where, by virtue of a designation contained in a pastoral scheme, a parish has more than one parish church; in this case two churchwardens must be appointed for each of the parish churches, and the Measure of 1964 applies separately to each pair of churchwardens, but all the churchwardens are churchwardens of the whole parish except insofar as they may arrange to perform separate duties in relation to the several parish churches: Pastoral Measure 1968, s 27 (3) (e). As to deputy churchwardens, see PARA 549 post.

2 Churchwardens (Appointment and Resignation) Measure 1964, s 1 (1). In this Measure 'parish' means (1) an ecclesiastical parish, and (2) a district which is constituted a conventional district for the cure of souls (see PARA 540 ante) and has a separate curate licensed to it: s 13; Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3.

3 'Residence' is not defined in the Churchwardens (Appointment and Resignation) Measure 1964, but some guidance as to its meaning in this context may be obtained by reference to analogous cases. Thus, for purposes of qualification for entry on the church electoral roll of a parish, words importing residence include residence of a regular but not a casual nature: Church Representation Rules, rr 1 (2) (d), 44 (5). See also *Herbert v Byrne* [1964] 1 All ER 882, [1964] 1 WLR 519, CA (a case under the Rent Acts), where Lord Denning MR stated at 886 and at 527, respectively, that for the purpose of establishing that a tenant is in occupation of a house as his home it need not be shown that he is there with his family all the time or that it is his only home.

4 Churchwardens (Appointment and Resignation) Measure 1964, s 1 (2). As to the church electoral roll, see PARA 591 post.

5 For the meaning of 'actual communicant member of the Church of England', see *ibid* s 13, applying the definition in PARA 420 note 1 ante.

6 *Ibid* s 1 (3). See however s 12 (3), which provides that nothing in the Measure affects a churchwarden in office before the passing of the Measure during the period for which he was chosen.

7 *Ibid* s 1 (4).

8 See *ibid* s 12 (4), which provides that nothing in the Measure is deemed to authorise the choice of any person as churchwarden who under the existing law is disqualified from being chosen for that office. As to the possibility of Roman Catholics or nonconformists being churchwardens, see PARAS 1395, 1401 post.

9 *Anthony v Seger* (1789) 1 Hag Con 9 at 10, per Sir William Scott.

10 *Anthony v Seger* (1789) 1 Hag Con 9 at 10, per Sir William Scott. See also Opinions of the Legal Board (5th Edn 1973) III/20.

11 In *Anthony v Seger* (1789) 1 Hag Con 9, Sir William Scott expressed the opinion that the Ordinary would be bound to reject a person convicted of felony. See also Phillimore, *Ecclesiastical Law* (2nd Edn) 1469. Some text writers have included conviction of fraud or perjury among the grounds of disqualification (see Cripps,

Church and Clergy (8th Edn) 160), but the authority for this proposition seems less clear. In the Parochial Church Councils (Powers) Measure 1921, s 15 (2) (repealed), it was provided that a conviction which would render a clergyman incapable of holding preferment under the Clergy Discipline Act 1892, s 1 (repealed), would disqualify a person from being elected or being a churchwarden, but no such provision was included in the Parochial Church Councils (Powers) Measure 1956.

With certain exceptions a convicted person is treated for all purposes, after a rehabilitation period, as if he had not committed the offence which was the subject of the conviction: see the Rehabilitation of Offenders Act 1974, and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 660 et seq.

UPDATE

543 Number and qualifications of churchwardens

TEXT AND NOTES--1964 Measure replaced: Churchwardens Measure 2001. Transitional provision is made so that nothing in the 2001 Measure affects a churchwarden in office before 1 January 2002 during the period for which he was chosen: s 14, Sch 1 para 1.

NOTE 1--1964 Measure s 12(2) now the 2001 Measure s 11(2) (see PARA 542 NOTE 7). 1968 Measure s 27(3)(e) now the 2001 Measure s 1(2)(a). 'Pastoral scheme' has the same meaning as in the Pastoral Measure 1983 s 87(1): 2001 Measure s 13(1). A church building or part of a building designated as a parish centre of worship under the Pastoral Measure 1983 s 29(2) (see PARA 539 NOTE 3) is, subject to the provisions of s 29(4), deemed, while the designation is in force, to be a parish church: 2001 Measure s 1(2)(b).

NOTE 2--1964 Measure s 1(1) now the 2001 Measure s 1(1). Church Representation Rules r 44 now r 54; SI 1994/3118. Words 'and has a separate curate licensed to it' in r 54(1) revoked: SI 1980/178. In relation to the Diocese in Europe, a chaplaincy which is constituted as part of the diocese is also included in the definition: r 54(1). 1964 Measure s 13 now the 2001 Measure s 13(1) (and see PARA 540).

TEXT AND NOTES 3-7--Replaced. The churchwardens of every parish must be chosen from persons who have been baptised and (1) whose names are on the church electoral role; (2) who are actual communicants; (3) who are twenty-one years of age or upwards; and (4) who are not disqualified under the 2001 Measure ss 2, 3 (see NOTES 8-11): s 1(3). 'Actual communicant' has the same meaning as that assigned to it in the Church Representation Rules r 54(1) (see PARA 420 TEXT AND NOTE 1): 2001 Measure s 13(1).

If it appears to the bishop, in the case of any particular person who is not qualified by virtue of heads (1)-(3), that there are exceptional circumstances which justify a departure from the requirements of those provisions, the bishop may permit that person to hold the office of churchwarden notwithstanding that those requirements are not met: s 1(4). Any such permission applies only to the period of office next following the date on which the permission is given: s 1(4) proviso. 'Bishop' means the diocesan bishop concerned: s 13(1).

No person may be chosen as churchwarden of a parish for any period of office unless he (a) has signified consent to serve as such; and (b) has not signified consent to serve as such for the same period of office in any other parish (not being a related parish), or, if such consent has been signified and the meeting of the parishioners to elect churchwardens of that other parish has been held, was not chosen as churchwarden of that other parish: s 1(5). For these purposes, 'related parish' means a parish belonging to the benefice to which the first-mentioned parish belongs, or belonging to a benefice held in plurality with the benefice to which the first-mentioned parish belongs, or having the same minister as the first-mentioned parish: s 1(5). For the meaning of 'minister' see PARA 544.

In relation to the filling of a casual vacancy among the churchwardens, the reference in head (b) to the same period of office is to be construed as a reference to a period of office which includes the period for which the casual vacancy is to be filled: s 1(6).

NOTES 8-11--The 2001 Measure disqualifies the following persons from being chosen for the office of churchwarden: (1) a person who is disqualified from being a charity trustee under the Charities Act 1993 s 72(1) (see CHARITIES vol 8 (2010) PARA 273) and the disqualification is not for the time being subject to a general waiver by the Charity Commissioners under s 72(4) or to a waiver by them under that provision in respect of all ecclesiastical charities established for purposes relating to the parish concerned; (2) a person who has been convicted of any offence mentioned in the Children and Young Persons Act 1933 Sch 1 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1164 NOTE 2), including an offence which, by virtue of any enactment, is to be treated as being included in any such reference in all or any of the provisions of that Act; and (3) a person who is disqualified from holding the office of churchwarden under the Incumbents (Vacation of Benefices) Measure 1977 (No 1) s 10(6) (see PARA 733F): 2001 Measure s 2(1)-(3). For the purposes of head (1), 'ecclesiastical charity' has the same meaning as that assigned to that expression in the Local Government Act 1894 (see CHARITIES vol 8 (2010) PARA 264 NOTE 4): 2001 Measure s 2(1).

Without prejudice to s 2, a person is disqualified from being chosen for the office of churchwarden when that person has served as a churchwarden of the same parish for six successive periods of office until the annual meeting of the parishioners to elect churchwardens in the next year but one following the date on which that person vacated office at the end of the last such period; provided that a meeting of the parishioners may by resolution decide that this provision does not apply in relation to the parish concerned: s 3. Any such resolution may be revoked by a subsequent meeting of the parishioners: s 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/A. APPOINTMENT AND TENURE OF OFFICE/544. Procedure for choosing churchwardens.

544. Procedure for choosing churchwardens.

The churchwardens of a parish must be chosen annually¹ not later than 30th April in each year², in accordance with the Churchwardens (Appointment and Resignation) Measure 1964 and any other Measure, Act or scheme affecting churchwardens³. According to the procedure prescribed by the Measure of 1964 the primary method of choice⁴ is by the joint consent⁵ of the minister⁶ of the parish and a meeting of the parishioners⁷; but if that method is not effective, either because the minister and the meeting cannot agree on the choice of both churchwardens by joint consent or because, after due opportunity has been given, no motions or insufficient motions have been moved in accordance with the prescribed procedure⁸, then one churchwarden must be appointed by the minister and the other must then be elected by the meeting⁹.

A casual vacancy among the churchwardens may be filled at any time by a person chosen¹⁰ in the same manner as was the churchwarden in whose place he is appointed¹¹.

1 No parish can legally be without churchwardens, and their appointment can be compelled by order of mandamus: *R v Wix Inhabitants* (1832) 2 B & Ad 197. For the meaning of 'parish', see PARA 543 note 2 ante.

2 Churchwardens (Appointment and Resignation) Measure 1964, s 2 (1); Church Representation Rules, r 11 (2) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to the bishop's power to alter or extend the time, see PARA 548 post.

3 Revised Canons Ecclesiastical, Canon E1 para 1. See also PARA 542 note 6 ante. In the case of any parish where there is an existing custom (see PARA 542 note 7 ante, and note 9 infra) which regulates the manner in which the churchwardens are chosen, nothing in the Churchwardens (Appointment and Resignation) Measure 1964 affects that custom (s. 12 (2)), and if in accordance with that custom any churchwarden is chosen by the vestry of that parish, either alone or jointly with any other person or persons, that churchwarden is to be chosen by the meeting of the parishioners (see PARA 545 post), either alone or jointly with the other person or persons, as the case may be (s. 12 (2) proviso).

4 No person, however, is deemed to have been chosen as a churchwarden by this method unless both churchwardens have been so chosen: *ibid* s 2 (2) proviso.

5 This joint consent is deemed to have been signified (1) if any motion stating the persons to be chosen or the name of either of them is declared by the person presiding over the meeting to have been carried, and (2) if in respect of any such motion the minister has announced his consent to the choice of the person or persons named in it, either before the putting of the motion or immediately upon the declaration of its result: *ibid* s 2 (2).

6 'Minister' means (1) the incumbent of a parish; (2) a curate licensed to the charge of a parish or a minister acting as priest-in-charge of a parish in respect of which rights of presentation are suspended; and (3) a vicar in a team ministry to the extent that the duties of a minister are assigned to him by a scheme under the Pastoral Measure 1968 or his licence from the bishop: Churchwardens (Appointment and Resignation) Measure 1964, s 13; Church Representation Rules, r 44 (1). During any period when there is no minister both the churchwardens must be elected by the meeting of the parishioners: Churchwardens (Appointment and Resignation) Measure 1964, s 2 (4): see PARA 545 post.

7 *Ibid* s 2 (2). As to the meeting of the parishioners, see PARA 545 post.

8 *Ie* in accordance with the provisions of *ibid* s 2 (2), respecting the signification of joint consent: see note 5 supra.

9 *Ibid* s 2 (3). Recourse to this alternative method of choice would not ordinarily be justified unless an attempt had first been made to choose the churchwardens by joint consent under s 2 (2). There is, it is true, a saving in respect of existing custom (see note 3 supra) but, according to an opinion of the Legal Board, the fact

that for many years it has been the practice in a parish for the minister to nominate one churchwarden does not necessarily indicate or prove an 'existing custom', for the purposes of this Measure; rather it normally indicates an assumed disagreement between the two appointing parties (as originally provided for in Canons Ecclesiastical (1603) 89 (repealed), and the former practice may continue in a modified form under the new procedure laid down in the Churchwardens (Appointment and Resignation) Measure 1964, ss 2, 3: see Opinions of the Legal Board (5th Edn 1973) II/92.

10 Churchwardens (Appointment and Resignation) Measure 1964, s 2 (5).

11 Ibid s 2 (6).

UPDATE

544 Procedure for choosing churchwardens

TEXT AND NOTES--1964 Measure replaced: Churchwardens Measure 2001.

NOTE 2--1964 Measure s 2(1) (as amended) now the 2001 Measure s 4(1).

NOTE 3--1964 Measure s 12(2) now the 2001 Measure s 11(2) (see PARA 542 NOTE 7).

TEXT AND NOTES 4-9--Replaced. According to the procedure prescribed by the 2001 Measure, the primary method of choice is now by election by a meeting of the parishioners: s 4(2). Candidates for election at the meeting must be nominated and seconded in writing by persons entitled to attend the meeting and each nomination paper must include a statement, signed by the person nominated, to the effect that that person is willing to serve as a churchwarden and is not disqualified under s 2(1)-(3) (see PARA 543 NOTES 8-11): s 4(3). A nomination is not valid unless the nomination paper is received by the minister of the parish before the commencement of the meeting, and, in the case of a person who is not qualified by virtue of s 1(3)(a)-(c) (see PARA 543 TEXT AND NOTES 3-7 heads (1)-(3)), the bishop's permission was given under s 1(4) (see PARA 543 TEXT AND NOTES 3-7) before the nomination paper is received by the minister of the parish: s 4(4). 'Minister' now has the same meaning as in what is now the Church Representation Rules r 54(1) except that, where a special responsibility for pastoral care in respect of the parish in question has been assigned to a member of the team in a team ministry under the Pastoral Measure 1983 s 20(8A) (see PARA 870) but a special cure of souls in respect of the parish has not been assigned to a vicar in the team ministry by a scheme under that measure or by his licence from the bishop (see PARA 690), it means that member: 2001 Measure s 13(1). For the meaning of 'bishop' see PARA 543.

If it appears to the minister of the parish that the election of any particular person nominated might give rise to serious difficulties between the minister and that person in the carrying out of their respective functions the minister may, before the election is conducted, make a statement to the effect that only one churchwarden is to be elected by the meeting; in that event one churchwarden is to be appointed by the minister from among the persons nominated, the name of the person so appointed being announced before the election is conducted, and the other is then to be elected by the meeting: s 4(5).

During any period when there is no minister, s 4(4) applies with the substitution for the words 'minister of the parish' of the words 'churchwarden by whom the notice convening the meeting was signed', and s 4(5) will not apply: s 4(6).

Where by virtue of any custom existing on 1 January 1965 (ie the date on which the 1964 Measure came into force), the choice of a churchwarden was, under the 1964 Measure s 12(2), required to be made by the meeting of the parishioners jointly with another person or persons, that custom is deemed to be an existing custom for the purposes of the 2001 Measure: s 13(2).

TEXT AND NOTES 10, 11--Replaced. A person may be chosen to fill a casual vacancy among the churchwardens at any time: s 4(7). Any person chosen to fill a casual vacancy is to be chosen in the same manner as was the churchwarden whose place he is to fill except that, where the churchwarden concerned was appointed by the minister and the minister has ceased to hold office, the new churchwarden to fill the casual vacancy is to be elected by a meeting of the parishioners: s 4(8).

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545. Meeting of the parishioners.

A meeting of the parishioners for the purpose of choosing churchwardens¹ is a joint meeting of the persons whose names are entered on the church electoral roll² of the parish³ and the persons resident⁴ in the parish whose names are entered on a register of local government electors by reason of that residence⁵. The meeting is in practice usually held on the same occasion as the annual parochial church meeting⁶ and immediately before it, but in law the two meetings are distinct⁷. The meeting of the parishioners must be convened by the minister or the churchwardens of the parish⁸. The minister, if present, or, if he is not present, a chairman chosen by the meeting, must preside⁹. The meeting has power to adjourn, and to determine its own rules of procedure¹⁰.

Where the election of a churchwarden takes place at the meeting of the parishioners, either because there has been no joint consent¹¹ or because there is no minister¹², the election must be conducted, announced and notified in the same manner as elections at annual parochial church meetings, except that all persons entitled to attend the meeting of the parishioners other than the minister are entitled to nominate and vote at the election of the churchwarden¹³.

1 See PARA 544 ante.

2 See PARA 591 post.

3 For the meaning of 'parish', see PARA 543 note 2 ante.

4 For the meaning of 'resident', see PARA 543 note 3 ante.

5 Churchwardens (Appointment and Resignation) Measure 1964, s 3 (1).

6 As to annual parochial church meetings, see PARA 563 post.

7 In particular, the qualifications for attendance and participation are wider in the case of a meeting of the parishioners than in the case of the annual parochial church meeting: see the text supra, and cf. para 542 ante, 563 post.

8 Churchwardens (Appointment and Resignation) Measure 1964, s 3 (2). A notice stating the place, day and hour of the meeting (s. 3 (3)), signed by the minister or a churchwarden (s. 3 (2)), must be affixed on or near the principal door of the parish church and of every other building licensed for public worship in the parish for a period including the last two Sundays before the meeting: s 3 (4). 'Public worship' means public worship according to the rites and ceremonies of the Church of England: s 13; Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3.

9 Churchwardens (Appointment and Resignation Measure 1964, s 3 (5). The minister is not entitled to nominate or vote at the election of a churchwarden, but in respect of other business (eg procedural matters) he is free to exercise a vote, including a casting vote: see note 13 infra, and s 3 (6), excluded in relation to the election of churchwardens by the Church Representation Rules, r 11 (2) (c).

10 Churchwardens (Appointment and Resignation) Measure 1964, s 3 (7). A person appointed by the meeting must act as clerk and record the minutes: s 3 (8).

11 See PARA 544 ante.

12 See PARA 544 note 6 ante.

13 Church Representation Rules r 11 (1). As to the conduct of elections at annual parochial church meetings, see r 10, and PARA 566 post. As regards appeals, the Churchwardens (Appointment and Resignation) Measure

1964, s 6, originally made separate provision for appeals in the case of elections of churchwardens, but s 6 was repealed by the Church Representation Rules, r 11 (2) (b), presumably because it was thought that r 11 (1) would have the effect of making r 36 applicable to elections of churchwardens. On that assumption, any person aggrieved has a right of appeal against the allowance or disallowance of a vote at such an election or against the result of it, and the procedure would be similar to that which is applicable in the case of an election to a diocesan or deanery synod: r 36 (1) (c), (d); see PARAS 426, 512 ante.

UPDATE

545 Meeting of the parishioners

TEXT AND NOTES--1964 Measure s 3 replaced: Churchwardens Measure 2001 s 5.

TEXT AND NOTE 8--1964 Measure s 3(2) now 2001 Measure s 5(2), which provides that the meeting must be convened by the minister or, during any period where there is no minister or when the minister is unwilling or unable to do so, the meeting must be convened by the churchwardens of the parish by a notice signed by the minister or a churchwarden as the case may be. For the meaning of 'minister' see PARA 544. Church Representation Rules r 44 now r 54; SI 1994/3118.

TEXT AND NOTES 9-13--Church Representation Rules r 11 now r 13; SI 1994/3118. Church Representation Rules r 13 (as renumbered) substituted: SI 2009/2129.

NOTE 9--See now the 2001 Measure s 5(6), which provides that, in case of an equal division of votes on any question other than one to determine an election of a churchwarden, the chairman of the meeting of the parishioners does not have a second or casting vote and the motion on that question is to be treated as lost.

NOTE 13--Church Representation Rules r 36(1)(c), (d) now r 44(1)(a), (b); SI 1989/2094, SI 1994/3118, which is also applicable to elections of churchwardens.

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546. Admission of churchwardens to office.

At a time and place to be appointed by the Ordinary, as soon as may be after 30th April in each year, each person chosen for the office of churchwarden must appear before the Ordinary, or his substitute duly appointed, and be admitted to the office of churchwarden after subscribing the declaration that he will faithfully and diligently perform the duties of his office, and making the same in the presence of the Ordinary or his substitute¹. No person chosen for the office of churchwarden actually becomes churchwarden until he has thus been admitted to office². Subject to the provisions governing the resignation or vacation of their office³, the churchwardens so chosen and admitted will continue in their office until they, or others as their successors, are admitted in like manner by the Ordinary⁴.

1 Churchwardens (Appointment and Resignation) Measure 1964, s 7 (1); Revised Canons Ecclesiastical, Canon E1 para 2 (amended by Amending Canon No. 1). The bishop is the Ordinary, and in years of episcopal visitation the admission of churchwardens is conducted by him or his chancellor or a surrogate: *R v Sowter* [1901] 1 KB 396, CA. In other years it is conducted by the archdeacon, normally at the time of his visitation. As to visitations, episcopal and archidiaconal, see PARA 490 et seq, 500 ante. Nothing in the Measure of 1964 appears to override or affect the practice whereby churchwardens make their declarations en bloc: see Opinions of the Legal Board (5th Edn 1973) II/90.

2 Churchwardens (Appointment and Resignation) Measure 1964, s 7 (1). The admission is, it seems, a ministerial, not a judicial act, and the Ordinary has no discretion to judge of the fitness of the person chosen by the parishioners, although he would be justified in refusing to admit one who lacked the qualifications required by law. The appropriate remedy for refusal to admit would apparently be an application for an order of mandamus: *R v Bishop of Sarum* [1916] 1 KB 466; see also *R v Rice* (1697) 1 Ld Raym 138; *R v Twitty* (1702) 2 Salk 433; *R v Dr Harris* (1763) 1 Wm Bl 430; *Anon* (1814) 2 Chit 254; *R v Williams* (1828) 8 B & C 681; *Ex parte Winfield* (1835) 3 Ad & El 614; *R v Archdeacon of Middlesex* (1835) 3 Ad & El 615; *Ex parte Duffield* (1836) 3 Ad & El 617; *Searell v Rowlandson* (1888) Trist 50; *Ex parte Lowe* (1835) 4 Dowl 15.

3 See PARA 547 post.

4 Churchwardens (Appointment and Resignation) Measure 1964, s 7 (2); Revised Canons Ecclesiastical, Canon E1 para 3. It is implied that churchwardens are eligible for reappointment at the expiration of their year of office, and that in cases of such reappointment they are required to be readmitted, with renewal of the declaration: cf. *Warner's Case* (1619) Cro Jac 532; *Stoughton v Reynolds* (1736) 2 Stra 1045; and see Opinions of the Legal Board (5th Edn 1973) III/20.

UPDATE

546 Admission of churchwardens to office

TEXT AND NOTES--1964 Measure s 7 now the Churchwardens Measure 2001 s 6.

TEXT AND NOTES 1, 2--1964 Measure s 7(1) now 2001 Measure s 6(1) which refers to the bishop instead of the Ordinary and to 31 July in each year instead of 30 April in each year, and provides that each person chosen for the office of churchwarden must now also subscribe a declaration to the effect that he will faithfully and diligently perform his duties and also that he is not disqualified under s 2(1)-(3) (see PARA 543 NOTES 8-11). For the meaning of 'bishop' see PARA 543.

TEXT AND NOTES 3, 4--Replaced. Subject to the provisions of the 2001 Measure, the term of office of the churchwardens so chosen and admitted continues until a date determined as follows: (1) in the case of a person who is chosen again as

churchwarden at the next annual meeting of the parishioners (a) if so admitted for the next term of office by 31 July in the year in question, the date of the admission; or (b) if not so admitted for the next term of office by 31 July in the year in question, that date; and (2) in the case of a person who is not chosen again as churchwarden at the next annual meeting of the parishioners (i) if that person's successor in office is so admitted for the next term of office by 31 July in the year in question, the date of the admission; or (ii) if that person's successor in office is not so admitted for the next term of office by 31 July in the year in question, that date: s 6(2).

In the application of head (2) to any person, where there is doubt as to which of the new churchwardens is that person's successor in office the bishop may designate one of the new churchwardens as that person's successor for the purposes of that provision: s 6(2) proviso.

Where any person ceases to hold the office of churchwarden at the end of July in any year by virtue of head (1)(b) or (2)(ii), a casual vacancy in that office is to be deemed to have arisen: s 6(3).

In relation to the filling of a casual vacancy, the reference in s 6(1) to 31 July is to be construed as a reference to a date three months after the person who is to fill the vacancy is chosen or the date of the next annual meeting of the parishioners to elect churchwardens, whichever is the earlier: s 6(4).

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547. Resignation and vacation of churchwarden's office.

If a churchwarden wishes to resign his office he may, with the written consent of the minister¹ and any other churchwarden of the parish, resign his office by a written instrument addressed to the bishop, and if the bishop accepts his resignation his office is forthwith vacated². A churchwarden is not entitled to resign his office otherwise than in accordance with these provisions³.

The office of churchwarden is vacated if the churchwarden is not resident in the parish and if his name is not on the church electoral roll of the parish⁴.

Churchwardens who, at the expiration of their year of office, are not chosen for the ensuing year vacate their office when their successors are admitted⁵.

1 For the meaning of 'minister', see PARA 544 note 6 ante.

2 Churchwardens (Appointment and Resignation) Measure 1964, s 8 (1).

3 Ibid s 8 (2).

4 Ibid s 9. That is to say, his office is vacated if he lacks both the qualifications specified in s 1 (2); see PARA 543 ante. The Measure contains no provisions as to vacation of office in the event of death, incapacity or misconduct. A vacancy caused by the death of a churchwarden in office could no doubt be dealt with under the provisions relating to casual vacancies: see PARA 544 ante. In the case of incapacity through physical or mental infirmity, it is uncertain whether, in default of the churchwarden's resignation, his office could be declared vacant, or the appointment of an additional churchwarden authorised, under s 11 (1): see PARA 548 post. As to misconduct, the older authorities made it clear that if a churchwarden wasted the goods of the parish or was guilty of other misconduct in his office, he was liable to be removed from office by an ecclesiastical court: see *Parish Clerk* (1611) 13 Co Rep 70; 1 Bl Com (14th Edn) 381; Com Dig, Esglise (F 1); *Dawe v Williams* (1824) 2 Add 130 at 133-135; *Fry and Greata v Treasure* (1865) 2 Moo PCCNS 539 at 555; *Ritchings v Cordingley* (1868) LR 3 A & E 113 at 117, 118. However, this remedy is no longer available in view of the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (c), whereby the jurisdiction of consistory courts to hear and determine proceedings against lay officers of a church was abolished: see PARA 1266 post. It is doubtful whether removal of a churchwarden could be effected by any alternative procedure, for example by extra-judicial proceedings at a visitation (as to which see PARA 490 ante) or by resolution of an extraordinary meeting of the parishioners, although there is authority for the use of the latter procedure in the past: see *Parish Clerk* supra; Ayl Par 171; Watson, Clergyman's Law (4th Edn) 390; Phillimore, Ecclesiastical Law (2nd Edn) 1489.

5 See PARA 546 note 4 ante; see also *Bray v Somer* (1862) 2 B & S 374; *Lane v Norman* (1891) 61 LJ Ch 149.

UPDATE

547 Resignation and vacation of churchwarden's office

TEXT AND NOTES--1964 Measure now the Churchwardens Measure 2001.

TEXT AND NOTES 1-3--Replaced. A churchwarden who wishes to resign his office must serve written notice of his intention to resign on the bishop by post: 2001 Measure s 7(2). The resignation has effect and the office is vacated at the end of the period of two months following service of the notice on the bishop, or on such earlier date as may be determined by the bishop after consultation with the minister and any other churchwarden of the parish: s 7(3). A person may not resign the office of churchwarden

otherwise than in accordance with these provisions: s 7(1). For the meaning of 'bishop' see PARA 543; and for the meaning of 'minister' see PARA 544.

TEXT AND NOTE 4--1964 Measure s 9 now the 2001 Measure s 8(1), which provides that the office of churchwarden is vacated if (1) the name of the person concerned is removed from the church electoral roll of the parish under the Church Representation Rules r 1 (see PARA 591); or (2) the name of the person concerned is not on a new church electoral roll of the parish prepared under r 2(4) (see PARA 594); or (3) the churchwarden becomes disqualified under the 2001 Measure s 2(1)-(3) (see PARA 543 NOTES 8-11). For these purposes a person who has been chosen for the office of churchwarden but has not yet been admitted to that office is deemed to hold that office, and the expressions 'office' and 'churchwarden' are to be construed accordingly: 2001 Measure s 8(2).

TEXT AND NOTE 5--See now PARA 546 TEXT AND NOTES 3, 4.

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548. Bishop's powers as to churchwardens.

In the carrying out of the Churchwardens (Appointment and Resignation) Measure 1964 the bishop of the diocese¹ is empowered (1) to make provision for any matter not provided for in the Measure²; (2) to appoint a person to do any act in respect of which there has been any neglect or default on the part of any person or body charged with any duty under the Measure³; (3) so far as may be necessary for the purpose of giving effect to the intentions of the Measure, to extend or alter the time for holding any meeting or election or to modify the procedure laid down by the Measure in connection with it⁴; (4) in any case in which there has been no valid choice, to direct a fresh choice to be made, and to give such directions in connection with it as he may think necessary⁵; and (5) in any case in which any difficulty arises, to give any directions which he may consider expedient for the purpose of removing the difficulty⁶.

1 During a vacancy in the diocesan see, the guardian of the spiritualities carries out the bishop's duties: Churchwardens (Appointment and Resignation) Measure 1964, s 11 (4). As to this guardian, see PARA 489 ante.

2 Ibid s 11 (1) (a).

3 Ibid s 11 (1) (b).

4 Ibid s 11 (1) (c).

5 Ibid s 11 (1) (d).

6 Ibid s 11 (1) (e). The bishop's powers under s 11 do not enable him to validate anything that was invalid at the time it was done: s 11 (2).

UPDATE

548 Bishop's powers as to churchwardens

TEXT AND NOTES--1964 Measure s 11 now the Churchwardens Measure 2001 s 10.

NOTE 1--1964 Measure s 11(4) not reproduced in the 2001 Measure.

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549. Deputy churchwardens.

Where a pastoral scheme establishes a team ministry¹, provision may be made in or under the scheme² for the election of deputy churchwardens for the church or place of worship³ of any district within the area of the team ministry⁴ and for assigning to them certain of the functions of the churchwardens of the parish concerned⁵.

Where, in a parish which has two or more churches or buildings licensed for public worship, the annual parochial church meeting⁶ makes a scheme providing for the election of a district church council for a district in which such a church or building is situated⁷, the scheme may also provide for the election or choice of one or two deputy churchwardens in respect of that church or building, and for the delegation to them of such functions of the churchwardens relating to it as the scheme may specify⁸.

1 See PARA 870 post.

2 The scheme may either make such provision itself or authorise the bishop to make it by instrument under his hand with the concurrence of the rector: Pastoral Measure 1968, Sch. 3 para 3 (2).

3 'Place of worship' in this context means a building or part of a building licensed for public worship according to the rites and ceremonies of the Church of England: *ibid* Sch. 3 para 3 (2).

4 *Ibid* Sch. 3 para 3 (2) (a).

5 *Ibid* Sch. 3 para 3 (2) (b). Provision may likewise be made for the election of a district church council (see PARA 871 post); the electing body is in each case the annual parochial church meeting: Sch. 3 para 3 (2).

6 See PARA 563 post.

7 See the Church Representation Rules, r 16 (1) (b), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865), and see PARA 565 post.

8 Church Representation Rules, r 16 (4). Subject to the scheme, the churchwardens may themselves delegate to the deputy churchwarden or churchwardens such of these functions as they think fit: r 16 (4).

UPDATE

549 Deputy churchwardens

TEXT AND NOTES 1-5--See now Pastoral Measure 1983 Sch 3 para 4(2) (see PARA 871).

TEXT AND NOTE 7--See now r 18(1)(b); SI 1981/959, SI 1994/3118 (see PARA 565).

TEXT AND NOTE 8--Now the scheme may also provide for the election or choice of one or two deputy churchwardens, and for the delegation to them of such functions of the churchwardens relating to any church or place as the scheme may specify: r 18(4); SI 1981/959; SI 1984/1039.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/550. Churchwardens as corporations.

B. CHURCHWARDENS' STATUS AND FUNCTIONS

550. Churchwardens as corporations.

Churchwardens are a quasi-corporation for the purpose of holding in perpetual succession the church's goods and also, in the City of London, for the purpose of holding land for ecclesiastical or parochial purposes¹. However, they must sue and be sued in their individual names and not by a corporate or official title, and they have no other legal incidents of a corporation². They can bring an action in their own names in respect of a matter which occurred during their predecessors' term of office³, but an action for a matter occurring in the discharge of their office cannot be brought against their successors⁴. The general rule is that both churchwardens must concur in bringing an action⁵ and doing any other official act⁶. However one churchwarden can apply for a faculty for alterations in the church⁷.

Churchwardens have frequently been responsible as trustees (usually in conjunction with the incumbent) for the holding and administration of property on charitable ecclesiastical trusts. To a large extent the duty of holding such property is now imposed by statute on the diocesan board of finance or other diocesan authority as custodian trustee⁸.

1 1 Bl Com (14th Edn) 394; Com Dig, Eglise (F3); Gib Cod 215; *R v Rice* (1697) 1 Ld Raym 138; *Withnell v Gartham* (1795) 6 Term Rep 388 at 396; *Fell v Charity Lands Official Trustee* [1898] 2 Ch 44 at 51, 59, CA. In *Warner's Case* (1619) Cro Jac 532 it is said that in London the parson and churchwardens are a corporation to purchase and demise land. In some other places they have been made a corporation for certain definite purposes by local Acts. See also CHARITIES vol 8 (2010) PARAS 256, 276. As to quasi-corporations, see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1101.

2 *Fell v Charity Lands Official Trustee* [1898] 2 Ch 44 at 51, CA, per Lindley MR. A monition of an ecclesiastical court to remove ornaments and perform other acts in the church must be addressed to them by their title of churchwardens and not by name: *Liddell v Beal* (1860) 14 Moo PCC 1.

3 *Hadman v Ringwood* (1589) Cro Eliz 145 at 179; Com Dig, Eglise (F3); *Perkins v Enraght* (1881) 7 PD 31; affd. sub nom. *Harris v Perkins* (1882) 7 PD 161, PC (a case under the Public Worship Regulation Act 1874, s 8 (repealed)); see also *Marriott v Tarpley* (1838) 9 Sim 279.

4 *Withnell v Gartham* (1795) 6 Term Rep 388 at 398, per Lord Kenyon CJ; *A-G v Salkeld* (1853) 16 Beav 554. In a proper case, however, the court will order the intervention of succeeding churchwardens in the proceedings: *A-G v Barker* (1843) Reg Lib A of 1801.

5 *Fry and Greata v Treasure* (1865) 2 Moo PCCNS 539; *Fowke v Berington* [1914] 2 Ch 308. Cf. *Quilter v Newton* (1690) Carth 151; *Gouldsworth v Knights* (1843) 11 M & W 337. Special considerations may apply in parishes divided into townships: *Astle v Thomas* (1823) 2 B & C 271.

6 *Starkey v Berton* (1610) Cro Jac 234; *Ritchings v Cordingley* (1868) LR 3 A & E 113.

7 *Bradford v Fry* (1878) 4 PD 93 at 99, 100. Cf. *Vicar of St Sepulchre v Churchwardens of St Sepulchre* (1879) 5 PD 64. As to applications for faculties, see PARA 1322 et seq post.

8 See the Incumbents and Churchwardens (Trusts) Measure 1964, and PARA 1230 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/551. Extent of churchwardens' functions.

551. Extent of churchwardens' functions.

Most of the former functions of churchwardens have been transferred to the parochial church council¹, but churchwardens, if they are actual communicant members of the Church of England² and have their names on the church electoral roll of the parish³, are ex officio members of the parochial church council⁴. The present functions of churchwardens may be divided into their functions as officers of the Ordinary and their functions as guardians of the parish church and its services. As officers of the Ordinary⁵ churchwardens must present to the Ordinary the answers to such questions as are put to them⁶, and they have powers, duties and liabilities with respect to visitations⁷. As guardians of the parish church they are the owners of the movables of the church⁸ and their functions extend to every consecrated church and chapel within the parish which is not provided with separate wardens, and to the churchyard and its curtilage⁹. These functions include (1) the maintenance of order in the church and churchyard¹⁰; (2) the allocation of seats in the church¹¹; (3) the provision (with the advice and direction of the minister) of the bread and wine for communion¹²; (4) taking part in the collection and disposal of the alms at the offertory in the communion service¹³; and (5) special duties during a vacancy in the benefice¹⁴.

1 As to the functions so transferred, see PARA 576 post.

2 For the meaning of 'actual communicant member of the Church of England', see PARA 420 note 1 ante.

3 As to the church electoral roll, see PARA 591 post.

4 Church Representation Rules, r 12 (1) (c), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 568 post.

5 See PARA 552 post.

6 See Opinions of the Legal Board (5th Edn 1973) III/21.

7 See PARA 552 post.

8 See PARA 553 post.

9 Ayl Par 166; *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 56, 57, per Sir John Nicholl.

10 See PARA 554 post.

11 See PARA 555 post.

12 Revised Canons Ecclesiastical, Canon B17 para 1: see PARAS 556, 982 post. The expenses are in practice and (it seems) in law payable by the parochial church council: see Canon F14.

13 See PARAS 585, 981 post, and Opinions of the Legal Board (5th Edn 1973) III/35.

14 See PARA 556 post.

UPDATE

551 Extent of churchwarden's functions

TEXT AND NOTE 4--See also r 14(2); SI 1980/178, SI 1994/3118 (para 569).

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552. Churchwardens as officers of the Ordinary.

The churchwardens when admitted are officers of the Ordinary¹. In former times churchwardens, questmen and sidesmen who were admitted by the Ordinary or his representative² had the duty of presenting to the Ordinary in his court all those in the parish guilty of ecclesiastical offences³. The duties of questmen and sidesmen in this respect have, by custom, devolved upon churchwardens, but in practice the extent of this duty of presentment is now very limited. In each year, upon the visitation of the Ordinary or his representative (usually the archdeacon⁴), churchwardens must present whatever is amiss or irregular in their parish⁵. At any time the Ordinary can make inquiry of them as to parochial matters and at any time they can inform the Ordinary of any such irregularities or derelictions of duty as need his intervention⁶. It is for the churchwardens to ensure that when a faculty or an archdeacon's certificate is required by law the necessary action is taken to obtain it⁷.

1 Revised Canons Ecclesiastical, Canon E1 para 4.

2 See PARA 546 ante.

3 Canons Ecclesiastical (1603) 89, 90, 109-119 (repealed).

4 As to visitation by the bishop, see PARA 490 et seq ante. As to visitation by the archdeacon, see PARA 500 ante.

5 The inquisitorial provisions of the Canons of 1603 have not been reproduced in the Revised Canons Ecclesiastical.

6 Opinions of the Legal Board (5th Edn 1973) III/21.

7 Revised Canons Ecclesiastical, Canon F13 para 3; Opinions of the Legal Board (5th Edn 1973) III/21.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/553. Ownership of movables.

553. Ownership of movables.

The plate, ornaments and other movable goods of the church are in the legal ownership of the churchwardens as a quasi-corporation¹, and they are the persons to take proceedings for the recovery of those goods if they are stolen or improperly removed². They must keep an inventory of the goods, revising it from time to time as occasion may require³. While the incumbent is the proper custodian of the keys of the church⁴, the churchwardens have a right of free access for the performance of their duties⁵.

1 Revised Canons Ecclesiastical, Canon E1 para 5. See also 1 Bl Com (14th Edn) 394; *A-G v Rupert* (1722) 2 P Wms 125; *Jackson v Adams* (1835) 2 Bing NC 402. A private person may have rights in them, eg a lien by agreement: *Walker v Clyde* (1861) 10 CBNS 381. The care, maintenance and insurance of the goods is the duty of the parochial church council: see PARAS 576, 582 post.

2 Opinions of the Legal Board (5th Edn 1973) III/21. See also *Hadman v Ringwood* (1589) Cro Eliz 145 at 179; *Welcome v Lake* (1666) 1 Sid 281; *Starky v Churchwardens of Watlington, Sussex* (1692) 2 Salk 547; *Adlam v Colthurst* (1867) LR 2 A & E 30; *Evans v Dodson* (1874) Trist 26. No one has power to dispose of church goods without a faculty, but churchwardens who improperly remove articles from a church cannot be indicted for theft of them, being in law their possessors: *Jackson v Adams* (1835) 2 Bing NC at 402 at 408. As to faculties for the removal of ornaments, see PARA 1318 et seq post.

3 Revised Canons Ecclesiastical, Canon E1 para 5. On going out of office the churchwardens must duly deliver to their successors any goods of the church remaining in their hands, together with the inventory, which must be checked by their successors: Canon E1 para 5.

4 See PARA 541 ante, 1079 post.

5 Opinions of the Legal Board (5th Edn 1973) III/21.

UPDATE

553 Ownership of moveables

TEXT AND NOTES--As to recording of information about churches by churchwardens and their duties in relation to the fabric of churches, see PARAS 553A, 553B.

NOTE 1--For ways in which property in moveables can pass to churchwardens see *Re Escot Church* [1979] Fam 125 (introduction of painting into church gift rather than loan).

NOTE 2--See also *Re St Anne's, Wrenthorpe* [1994] 2 WLR 338 (furniture in church owned by vicar or churchwardens unconditionally).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/553A. Recording of information about churches.

553A. Recording of information about churches.

In every parish¹ the churchwardens must (1) compile and maintain a full terrier of all lands appertaining to the church and a full inventory of all articles appertaining to the church, and (2) insert in a log-book maintained for the purpose a full note of all alterations, additions and repairs to, and other events affecting, the church and the lands and articles appertaining thereto and of the location of any other documents relating to such alterations, additions, repairs and events which are not kept in the log-book². In carrying out this duty, the churchwardens must act in consultation with the minister³. They must send a copy of the inventory to a person designated by the bishop as soon as practicable and must notify that person of any alterations in accordance with the bishop's directions⁴.

Any person or body carrying out functions of care and conservation must have due regard to the role of a church as a local centre of worship and mission⁵.

1 These provisions apply to each church in a parish containing more than one church: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 4(5).

2 Ibid s 4(1). The form of the terrier, inventory and log-book must accord with recommendations made by the Council for the Care of Churches: s 4(3).

3 Ibid s 4(2).

4 Ibid s 4(4).

5 Ibid s 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/553B. Fabric of churches.

553B. Fabric of churches.

In every parish¹ the churchwardens must (i) at least once in every year inspect the fabric of the church and all articles appertaining to the church, and (ii) in every year deliver to the parochial church council, and on behalf of that council to the annual parochial church meeting, an annual fabric report on the fabric of the church and all articles appertaining to the church, including an account of all actions taken or proposed during the previous year for their protection and maintenance and, in particular, for the implementation of any recommendation contained in an inspection scheme² report³. In carrying out this duty, the churchwardens must act in consultation with the minister⁴. The annual fabric report must be delivered to the parochial church council at its meeting next before the annual parochial church meeting and to the ensuing annual parochial church meeting⁵. The churchwardens must, as soon as practicable after the beginning of each year, produce to the parochial church council the terrier, the inventory and the log-book⁶ relating to events occurring in the previous year and such other records as they consider likely to assist the council in discharging its functions in relation to the fabric and articles of the church⁷.

1 These provisions apply to each church in a parish containing more than one church: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 5(6).

2 Ie a scheme made in pursuance of the Inspection of Churches Measure 1955 s 1.

3 1991 Measure s 5(1). 'Year' means calendar year: s 5(7).

4 Ibid s 5(2).

5 Ibid s 5(3).

6 Any terrier, inventory and log-book (see PARA 553A) must be accompanied by a statement, signed by the churchwardens, to the effect that their contents are accurate: ibid s 5(5).

7 Ibid s 5(4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/554. Maintenance of order.

554. Maintenance of order.

Churchwardens are charged with the maintenance of order and decency in the church and churchyard, especially during the time of divine service¹. They and their assistants must not suffer the church or chapel to be profaned by any meeting in it for temporal objects inconsistent with the sanctity of the place², nor the bells to be rung at any time contrary to the minister's direction³, nor any person so to behave in the church, church porch or churchyard during the time of divine service as to create disturbance³. They may remove from the church persons who disturb the service⁴ or who, before its commencement, indicate an intention of doing so⁵. If any person is guilty of riotous, violent or indecent behaviour in any church, chapel or churchyard, whether or not in any time of divine service, or of disturbing, vexing, troubling or misusing any minister officiating there, the churchwardens or their assistants must take care to restrain the offender and if necessary proceed against him according to law⁶. However, they cannot interfere with the conduct of the service by the minister on the ground of any impropriety in its performance, unless his behaviour amounts to being actually riotous, violent or indecent⁷.

¹ Revised Canons Ecclesiastical, Canon E1 para 4; Ayl Par 171; 1 Hawk PC c. 63, s 29; *Haw v Planner* (1666) 2 Keb 124; *Cox v Goodday* (1811) 2 Hag Con 138 at 141; *Palmer v Tijou* (1824) 2 Add 196 at 200, 201, per Sir John Nicholl; *Burton v Henson* (1842) 10 M & W 105 at 108, per Alderson B. In the discharge of these duties they are to be assisted by the sidesmen: Revised Canons Ecclesiastical, Canon E2 para 3: see also PARA 557 post.

² Ibid Canon F15 para 1.

³ Ibid Canon F15 para 2.

⁴ *Gleaver v Hynde* (1673) 1 Mod Rep 168; *Reynolds v Monkton* (1841) 2 Mood & R 384. A churchwarden may turn a trespasser out of church even when no service is in progress or about to take place: see *Jarratt v Steele* (1820) 3 Phillim 167; *Worth v Terrington* (1845) 13 M & W 781; *Cope v Barber* (1872) LR 7 CP 393 at 404n (1). Churchwardens have a statutory power of arrest in this connection: Ecclesiastical Courts Jurisdiction Act 1860, s 3. As to the right to attend divine service, see *Cole v Police Constable 443A* [1937] 1 KB 316, [1936] 3 All ER 107, DC.

⁵ *Hartley v Cook* (1833) 9 Bing 728 at 735; *Burton v Henson* (1842) 10 M & W 105.

⁶ Revised Canons Ecclesiastical, Canon F15 para 3: see also the Ecclesiastical Courts Jurisdiction Act 1860, s 2, and PARA 1048 post.

⁷ *Hutchins v Denziloe and Loveland* (1792) 1 Hag Con 170 at 173, per Sir William Scott, where it is said that normally their proper course is to complain to the Ordinary of his conduct, but that in exceptional circumstances they and even private persons may interpose to preserve the decorum of public worship. See also *A-G v St Cross Hospital* (1854) 18 Beav 601 at 605 et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/555. Allocation of seats.

555. Allocation of seats.

Seats must be provided in every church and chapel for the use of the parishioners and others who attend divine service¹. In parish churches and chapels it belongs to the churchwardens, acting for this purpose as the officers of the Ordinary² and subject to his direction³, to allocate the seats among the parishioners and others⁴ in such manner as the service of God may be best celebrated in the church or chapel⁵, but this provision does not affect the minister's right to allocate seats in the chancel⁶ or the right of any person to a seat or to allocate seats conferred by faculty, prescription or statutory authority⁷.

In carrying out their duty the churchwardens may direct individuals as to where they shall or shall not sit, and may assign seats to individuals either beforehand or at the time for a particular service or for an indefinite period. They cannot make an irrevocable assignment or divest themselves or their successors of the power of making a fresh arrangement whenever circumstances render it desirable⁸. They have no right to prevent a parishioner from entering the church to attend service on the ground of insufficiency of convenient accommodation or from standing during the service if he cannot get a seat⁹. Except where expressly directed or sanctioned by statute¹⁰, they cannot demand a rent or payment for a pew or seat¹¹. They may remove a parishioner who intrudes into a seat which they have assigned to another, provided they do so without using any unnecessary force and without causing public scandal or disturbing divine service¹².

1 Revised Canons Ecclesiastical, Canon F7 para 1.

2 Ayl Par 484-486; *Pettman v Bridger* (1811) 1 Phillim 316 at 323, per Sir John Nicholl. Of common right the disposal of pews in a church belongs to the Ordinary: *St Swithin's Parish Case* (1695) Holt KB 139.

3 *Corven's Case* (1612) 12 Co Rep 105; *Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195 at 212. Parishioners to whom seats are assigned by the Ordinary are entitled to occupy them at all services: see at 215, 216.

4 The allocation of seats to non-parishioners must not interfere with the parishioners' rights to have seats in the main body of the church: Revised Canons Ecclesiastical, Canon F7 para 3. However, persons who, though not parishioners in the ordinary sense (see PARA 561 post), have their names on the church electoral roll of the parish might well be regarded as having the rights of parishioners in this respect: cf. para 545 ante.

5 Ibid Canon F7 para 2. See PARA 1088 et seq post.

6 The extent, and indeed the existence, of this right, seems open to question: see note 7 infra.

7 Revised Canons Ecclesiastical, Canon F7 para 2. There may be rights of ownership in a private aisle or chapel (*Chapman v Jones* (1869) LR 4 Exch 273: see PARA 1107 post, and PARA 1225 note 5 post), or, by faculty or prescription, in a pew in the chancel or elsewhere in the church (see PARA 1086 et seq post); see also Opinions of the Legal Board (5th Edn 1973) III/15, 16. The rector (lay or ecclesiastical) may have a right to a seat in the chancel for himself and his family (*Stileman-Gibbard v Wilkinson* [1897] 1 QB 749 at 761, 62; see also PARA 1258 post), and in some cases the vicar may have a similar right to a seat in the church by prescription (see PARA 1086 post). The reference in the saving provision of Canon F7 para 2, to the minister's right to allocate seats in the chancel is hardly sufficient to create a general right of this kind if it does not already exist; and on this question there is a conflict of opinion in the authorities. In *Gib Cod* at 200 it is stated that seats in the chancel are under the disposition of the Ordinary, in like manner as those in the body of the church; and the majority of later writers appear to follow this opinion: see eg Phillimore, *Ecclesiastical Law* (2nd Edn) 1432; Pridaux, *Churchwardens' Guide* (16th Edn) 294; Cripps, *Church and Clergy* (8th Edn) 213; Dale, *Law of the Parish Church* (4th Edn) 89. As to the effect of a faculty conferring the right to occupy a pew, see Opinions of the Legal Board (5th Edn 1973) III/46, 47, and PARA 1312 post.

8 *Corven's Case* (1612) 12 Co Rep 105; *Pettman v Bridger* (1811) 1 Phillim 316 at 323, 324; *Parham v Templar* (1821) 3 Phillim 515 at 523, 526; *Fuller v Lane* (1825) 2 Add 419 at 425; *Asher v Calcraft* (1887) 18 QBD 607. Before dispossessing a parishioner of a seat usually occupied by him the churchwardens ought to give him notice and an opportunity for remonstrance: *Horsfall v Holland and Woolley* (1859) 6 Jur NS 278. There may be immemorial customs as to the allocation of seats: *Brabin v Trediman* (1618) 2 Roll Rep 24; *Colebach v Baldwyn* (1692) 2 Lut 1032. Parishioners to whom seats are assigned have no right to exclude others if they and their families do not occupy the whole. In that event the churchwardens may fill up the assigned seats after the service commences (*Re Cathedral Church of St Columb, Londonderry (Pews)* (1863) 8 LT 861), but not before (*Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195 at 216). See also PARAS 562, 1088, 1089 post.

9 *Taylor v Timson* (1888) 20 QBD 671.

10 See PARA 1092 et seq post.

11 *Walter v Gunner and Drury* (1798) 1 Hag Con 314 at 317, 318; but see *Vicar of St Saviour, Westgate-on-Sea v St Saviour, Westgate-on-Sea Parishioners* [1898] P 217 at 221. As to statutory pew rents, see PARA 1092 et seq post.

12 *Reynolds v Monkton* (1841) 2 Mood & R 384. The jurisdiction of consistory courts in suits for perturbation of seat has been abolished: see the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (c).

UPDATE

555 Allocation of seats

NOTE 12--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iii) Churchwardens/B. CHURCHWARDENS' STATUS AND FUNCTIONS/556. Miscellaneous functions of churchwardens.

556. Miscellaneous functions of churchwardens.

The responsibility for providing the necessary requisites for divine service, such as books, linen, plate and furniture, now rests in general on the parochial church council¹, although in practice it is often left to the churchwardens to act on behalf of the council in such matters. It is still, however, the duty of the churchwardens as such, with the advice and direction of the minister, to provide sufficient bread and wine for Holy Communion².

Churchwardens take part in the collection and disposal of the alms and other offerings given at the offertory in the communion service³.

When a benefice becomes vacant and its profits are sequestrated⁴ the churchwardens are usually appointed sequestrators⁵. Their right and duty in reference to the performance of divine service during the vacancy arises from their filling that position⁶. The church register books are in their custody during the vacancy⁷.

1 As to these requisites, see the Revised Canons Ecclesiastical, Canons F1-F14, and PARAS 579, 951 post. It was formerly the duty of the churchwardens to provide them: see Canons Ecclesiastical (1603) 52, 80-84 (repealed).

2 Revised Canons Ecclesiastical, Canon B17 para 1. See also PARA 551 note 11 ante, 982 post.

3 See PARA 981 post.

4 See PARA 910 post; *Drury v Harrison* (1794) 3 Phillim 515n at 517n.

5 As to sequestration, see generally para 892 et seq post.

6 *A-G v St Cross Hospital* (1856) 8 De GM & G 38 at 55.

7 *R v Cumley, ex parte Holloway* (1855) 3 WR 247. As to the churchwardens' duties under the Benefices (Transfer of Rights of Patronage) Measure 1930, see PARA 803 post. The Ordinary must give the churchwardens one month's notice before instituting or admitting a new incumbent: see PARA 843 post.

UPDATE

556 Miscellaneous functions of churchwardens

NOTE 7--1930 Measure repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iv) Other Parish Officers/557. Sidesmen.

(iv) Other Parish Officers

557. Sidesmen.

The sidesmen of the parish are by law elected by the annual parochial church meeting¹. A person is not qualified to be elected a sidesman unless his name is on the church electoral roll of the parish², and no person may be elected unless he has signed his consent to serve or there is, in the meeting's opinion, sufficient evidence of his willingness³.

It is the sidesmen's duty to promote the cause of true religion in the parish and to assist the churchwardens in the discharge of their duties in maintaining order and decency in the church and churchyard, especially during the time of divine service⁴.

1 Church Representation Rules, rr 8 (4) (c), 10, contained in the Synodical Government Measure 1969, Sch. 3; Revised Canons Ecclesiastical, Canon E2 para 1 (amended by Amending Canon No. 1). As to the annual parochial church meeting and the procedure for election, see PARA 563 et seq post.

2 Church Representation Rules, r 9 (2); Revised Canons Ecclesiastical, Canon E2 para 2. As to the electoral roll, see PARA 591 post. All persons whose names are on the roll are eligible as sidesmen: Canon E2 para 2.

3 Church Representation Rules, r 9 (3).

4 Revised Canons Ecclesiastical, Canon E2 para 3. As to the churchwardens' duties in maintaining order and decency, see PARA 554 ante.

UPDATE

557 Sidesmen

NOTES--Rules 8-10 now rr 9-11; SI 1994/3118. Rule 9 amended: SI 2004/1889.

NOTE 1--For 'elected' read 'appointed': r 10(2); SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iv) Other Parish Officers/558. Parish clerks.

558. Parish clerks.

A parish clerk may be appointed in accordance with the law in any parish in which the services of such an officer are required¹. The parochial church council has power jointly with the minister to appoint and dismiss² the parish clerk or any persons performing or assisting to perform the duties of parish clerk, and to determine their salaries and the conditions of the tenure of their offices or of their employment³. The office of parish clerk may be held by a lay person (male or female⁴) or by a person in holy orders⁵. The traditional function of the parish clerk has been to lead the laity in its part in divine service and the offices of the church, but nowadays it seems open to the council and the minister to define more broadly the duties of the office⁶.

1 Revised Canons Ecclesiastical, Canon E3. He must be a fit and proper person, and he may be appointed to perform such services upon such terms and conditions as the minister and the council may think fit: Canon E3. As to guild church clerks, see PARA 605 post.

2 The appointment may be made by parol and without formal words: *Gatton Parish v Milwich Parish* (1712) 2 Salk 536; *Anon* (1774) Lofft 434; *R v Bobbing Inhabitants* (1836) 5 Ad & El 682. The office of parish clerk has been held to be a temporal office within the jurisdiction of the temporal courts: 1 Bl Com (14th Edn) 385; *Lawrence v Edwards* [1891] 2 Ch 72. In ancient parishes it was formerly a freehold for life (1 Bl Com (14th Edn) 395); and the present statutory power of dismissal is subject to the rights of any persons holding the office at the appointed day: Parochial Church Councils (Powers) Measure 1956, s 7 (iii). 'Appointed day' is not defined, but is thought to be 1st July 1921: cf. para 575 note 2 post. As to the application of s 7 (iii), see note 3 infra. Appointment and dismissal will be subject also to the provisions of the general law relating to employment: see Opinions of the Legal Board (5th Edn 1973) III/63; see further EMPLOYMENT.

3 Parochial Church Councils (Powers) Measure 1956, s 7 (iii). If the council and the minister are unable to agree, the matter must be dealt with or determined in such manner as the bishop may direct: s 9 (3). Sections 7 (iii) and 9 do not apply where the parochial church council's functions have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4) (b). Apart from the salary payable under his contract, if any, the clerk is remunerated by the fees payable on marriages and burials: Ecclesiastical Fees Measure 1962, s 2; Parochial Fees Order 1972: see PARA 1198 post; see also Opinions of the Legal Board (5th Edn 1973) III/63, where it was stated that the clerk can sue for his fees either the incumbent or the churchwardens to whom they have been paid.

4 See Opinions of the Legal Board (5th Edn 1973) III/63.

5 If a person in holy orders is appointed, he must be licensed by the bishop in the same manner as a stipendiary curate (see PARA 706 post), and he is then entitled to perform all such spiritual and ecclesiastical duties within the parish or district as the incumbent, with the bishop's sanction, from time to time requires: Lecturers and Parish Clerks Act 1844, s 2. The provisions of s 3 as to the mode of appointment are rendered obsolete by the Parochial Church Councils (Powers) Measure 1956, s 7 (iii). He may be suspended or removed from the office in the same manner and for the like causes and subject to the same right of appeal as a stipendiary curate (see PARAS 721, 722 post), and the appointment does not exempt the incumbent from any obligation to employ a curate or curates to assist him in his ministrations to which he would be otherwise subject: Lecturers and Parish Clerks Act 1844, s 4.

6 Revised Canons Ecclesiastical, Canon E3; see note 1 supra.

UPDATE

558 Parish clerks

NOTE 3--For fees see PARA 1198.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iv) Other Parish Officers/559. Sextons; vergers.

559. Sextons; vergers.

A sexton, now often designated verger, or any persons performing or assisting to perform the duties of his office, may be appointed and dismissed by the parochial church council jointly with the minister, who together determine the salary and conditions of the tenure of their office and of their employment¹. The sexton's or verger's remuneration may be provided wholly or partly out of the fees payable on marriages, burials and other occasions². The office may be held by a woman³.

A sexton's or verger's duties vary from parish to parish⁴ and may include the care of the church and of its furniture and the sacred vestments, the ringing of the bells, the care of the churchyard and the digging of the graves⁵.

1 Parochial Church Councils (Powers) Measure 1956, s 7 (iii); Revised Canons Ecclesiastical, Canons E3. If they are unable to agree the bishop may give such directions as may appear necessary: Parochial Church Councils (Powers) Measure 1956, s 9 (3). As to the application of ss 7 (iii), 9, see PARA 558 note 3 ante. The rights of those holding the office on the appointed day are preserved: s 7 (iii); see PARA 558 note 2 ante; and see also Opinions of the Legal Board (5th Edn 1973) III/63.

2 See PARA 558 note 3 ante.

3 *Olive v Ingram* (1739) 2 Stra 1114; see Opinions of the Legal Board (5th Edn 1973) III/63.

4 *Cansfield v Blenkinsop* (1849) 4 Exch 234 at 239.

5 See 3 Burn's Ecclesiastical Law (4th Edn) 602. The council and the minister have, it seems, some discretion as to the services to be required of the person appointed. The name 'sacristan', which was identical with sexton, seems now to be confined to one who has no grave-digging duties, but is mainly concerned with the care of sacred vessels and vestments and is frequently a voluntary worker. The title 'beadle' is still sometimes found, but the office in its true meaning is now obsolete; he was the messenger and servant of the vestry, and executed its orders: 1 Burn's Ecclesiastical Law (4th Edn) 415.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(iv) Other Parish Officers/560. Organists.

560. Organists.

The right of appointment to the office of organist, which is not an office known to the common law, belongs in law to the incumbent, who cannot bind his successor in this matter, but the exercise of the right depends in practice on the person or persons willing to become responsible for payment of the organist's salary (generally now the parochial church council), and the direction and other conditions of his office will be regulated by the terms of the agreement by which he is appointed¹.

In all churches and chapels (other than in cathedral or collegiate churches or chapels, where the matter is governed by or dependent upon the relevant statutes or custom) it belongs to the minister to direct when the organ shall, and when it shall not, be played, and to decide what part of the service shall be sung². The minister is required to pay due heed to the advice and assistance of the organist or choirmaster in the choosing of chants, hymns, anthems and other settings and in the ordering of the music of the church, but at all times the final responsibility and decision in these matters rests with the minister³.

1 As to the appointment and duties of the organist and the use of the organ generally, see Opinions of the Legal Board (5th Edn 1973) III/58 et seq. See also PARA 947 post.

2 Revised Canons Ecclesiastical, Canon B20 para 1. The organist must not at any time play on the organ in opposition to the minister's directions: *Wyndham v Cole* (1875) 1 PD 130. If the minister arbitrarily forbids his playing the organist may appeal to the Ordinary, but must provisionally obey the minister's directions until the Ordinary prescribes the right course for the minister to adopt: *Wyndham v Cole* supra, at 134, per Sir Robert Phillimore.

3 Revised Canons Ecclesiastical, Canon B20 para 2. The minister's authority in such matters extends to occasions when matrimony is to be solemnised in church: Canon B35. para 5. On all occasions it is the minister's duty to ensure that only such chants, hymns, anthems and other settings are chosen as are appropriate to worship and prayer in God's House and to the congregation, and to banish all irreverence in the practice and performance of the music: Canon B20 para 3.

UPDATE

560 Organists

TEXT AND NOTES--The General Synod now has the power to make provision by canon with respect to the appointment of persons to act as organists and choirmasters and with respect to the termination of such appointments: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(v) Parishioners/561. Who are parishioners.

(v) Parishioners

561. Who are parishioners.

The term 'parishioners' is of frequent occurrence in ecclesiastical law, but its meaning is liable to vary according to the context. In the older authorities the parishioners are often identified with the inhabitant householders of the parish, but usually with the inclusion of persons who, though not actually resident, occupy lands or tenements in the parish and pay rates in respect of them¹. Parishioners in that sense were entitled to take part in the choosing of churchwardens² and other business of the vestry³; they could claim as of right to be allotted seats in the church⁴, and shared the liability for repairs to the church building⁵.

For certain purposes the term had, and still has, a wider connotation, for example, in relation to the right of access to the church for divine service, the right to be married in the church and the right to be buried in the churchyard⁶.

The exercise of the foregoing rights has not been regarded as conditional upon membership of the Church of England⁷. The tendency in recent legislation has been to emphasise actual residence rather than the status of householder⁸, and in some cases to recognise or require inclusion in the church electoral roll as a qualification for participation in the affairs of the church⁹.

1 *Jeffrey's Case* (1589) 5 Co Rep 66b; *Drury v Harrison* (1794) 3 Phillim 515 n at 517 n; *A-G v Parker* (1747) 3 Atk 576; *A-G v Forster* (1804) 10 Ves 335 at 339, 343; *Veley v Burder* (1841) 12 Ad & El 265, Ex Ch; *Etherington v Wilson* (1875) 1 ChD 160, CA. The tenant of a house in an ecclesiastical parish who pays rates but does not reside in it can maintain a suit for a faculty in respect of the church: *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80; *Davey v Hinde* [1901] P 95: see PARA 1319 post. As to 'inhabitants' and 'parishioners', see also CHARITIES vol 8 (2010) PARA 120.

2 Canons Ecclesiastical (1603) 89 (repealed); Prideaux, Churchwardens' Guide (16th Edn) 20, 21, 138. As to the modern law on the method of choosing churchwardens, see PARA 544 ante.

3 See PARA 568 post.

4 See PARA 555 ante, 562 post.

5 See PARA 1096 post.

6 In reference to such privileges, residence alone (without any qualification as a householder or ratepayer) appears to be sufficient, a person lodging in the parish being regarded for this purpose as a parishioner: *St Swithin's Parish Case* (1695) Holt KB 139. See also PARA 562 post. As to the right to attend divine service, see *Cole v Police Constable 443A* [1937] 1 KB 316, [1936] 3 All ER 107, DC.

7 As to membership of the Church of England, see PARA 346 ante. In former times all the inhabitants of a parish were deemed to be members of the Church of England, in the absence of evidence to the contrary. A question may be raised whether by adhering to a dissenting body a person may lose the right to attend services in the parish church; but see *Re Perry Almshouses* [1898] 1 Ch 391 at 399, where the contrary view is implied.

8 Eg in the case of the meeting of parishioners for the choosing of churchwardens: see PARA 545 ante.

9 Eg in the cases of the meeting of parishioners referred to in note 8 supra, and of the annual parochial church meeting: see PARA 563 post. As to the church electoral roll, see PARA 591 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(v) Parishioners/562. Parishioners' rights.

562. Parishioners' rights.

A parishioner has a right to enter his parish church and remain there for the purpose of participating in divine worship so long as there is accommodation available¹. Subject to certain rights² he is entitled to a seat so long as there is a seat available³ and, although he must obey the reasonable directions of the churchwardens, acting as the officers of the bishop, as to which seat he shall occupy⁴ he cannot be prevented by them from entering and standing if no seat is available⁵. A parishioner is entitled to receive the ministrations of the church and of the parish clergy in the parish church and other proper places⁶ and to be buried in the churchyard or burial ground of or belonging to the parish⁷.

Subject to such special conditions as are imposed by law⁸ parishioners are entitled personally to attend and take part in the meetings, if any, of the vestry⁹, the meeting of parishioners for the choosing of churchwardens¹⁰ and all parochial church meetings¹¹.

1 *Jarratt v Steele* (1820) 3 Phillim 167. This right was formerly regarded as a corollary of the statutory duty (under the Act of Uniformity 1551, s 1 (repealed)) to attend divine service in the parish church; but in *Cole v Police Constable 443A* [1937] 1 KB 316, [1936] 3 All ER 107, DC, the view was expressed by Goddard J that it was a common law right not dependent on the statutory obligation.

2 See PARA 555 ante, 1086 post.

3 *St Swithin's Parish Case* (1695) Holt KB 139; *Groves and Wright v Rector etc of Hornsey* (1793) 1 Hag Con 188 at 194, per Lord Stowell; *Walter v Gunner and Drury* (1798) 1 Hag Con 314 at 317; *Taylor v Timson* (1888) 20 QBD 671 at 682. Cf. *Re Avenon's Charity, A-G v Pelly* [1913] 2 Ch 261 at 278. See also PARA 555 ante.

4 Churchwardens may fairly give priority to parishioners who pay a voluntary church rate or some similar sum: *Vicar of St Saviour, Westgate-on-Sea v St Saviour, Westgate-on-Sea Parishioners* [1898] P 217 at 221.

5 *Taylor v Timson* (1888) 20 QBD 671 at 682.

6 *Williams's Case* (1592) 5 Co Rep 72b; *Henley v Burstow* (1666) 1 Keb 947; *Bishop of St David v Baron De Rutzen* (1861) 7 Jur NS 884 at 887; *Jenkins v Cook* (1876) 1 PD 80, PC; *Banister v Thompson* [1908] P 362; *R v Dibdin* [1910] P 57, CA; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL.

7 See CREMATION AND BURIAL vol 10 (Reissue) PARA 1059. See also Opinions of the Legal Board (5th Edn 1973) III/8, 9, and PARA 1315 post. As to rights in respect of other ministrations, see PARA 977 et seq post (Holy Communion) PARA 1005 post (marriage), and PARA 993 post (baptism). For the special provisions of the Pastoral Measure 1968 respecting the rights of parishioners in new or altered parishes, see PARA 538 ante, 1006 post.

8 See PARA 561 ante.

9 See PARA 568 post.

10 In this case the persons entitled are those whose names are entered on the church electoral roll of the parish (see PARA 591 et seq post) and those resident in the parish whose names are entered on the register of local government electors by reason of such residence (see PARA 545 ante).

11 In this case the lay persons entitled are those whose names are entered on the church electoral roll of the parish and no others: see PARA 563 post.

UPDATE

562 Parishioners' rights

NOTE 1--See *Re St Michael's, Orchard Portman* [2001] 2 WLR 1686 (right to enter to lay flowers at commemorative window).

NOTE 7--1968 Measure consolidated in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(vi) Parochial Church Meetings/563. Annual parochial church meeting.

(vi) Parochial Church Meetings

563. Annual parochial church meeting.

In every parish¹ there must be held not later than 30th April in each year the annual parochial church meeting². All lay persons³ whose names are entered on the church electoral roll⁴ of the parish are entitled to attend the meeting and to take part in its proceedings, and no other lay person is so entitled⁵. A clerk in holy orders is entitled to attend and take part if he is either beneficed in or licensed to the parish or any other parish in the area of the benefice to which the parish belongs⁶; or if the parish is in the area of a group ministry and he is an incumbent of any benefice in the group⁷; or if he is resident⁸ in the parish and is not beneficed in or licensed to any other parish⁹. The meeting must be convened by the minister¹⁰ of the parish by a notice in the prescribed form¹¹ affixed on or near to the principal door of every church in the parish, and every building licensed for public worship¹² in the parish, for a period including the last two Sundays before the day of the meeting¹³.

The minister, if present, or if he is not present the vice-chairman of the parochial church council, or if he also is not present a chairman chosen by the meeting, must preside¹⁴. The secretary of the parochial church council, or another person appointed by the meeting in his place, must act as a clerk of the annual meeting and record its minutes¹⁵. The meeting has power to adjourn and to determine its own rules of procedure¹⁶. In the case of an omission to hold the annual meeting, the rural dean, upon the omission being brought to his notice, must ascertain the cause and report it to the bishop¹⁷.

1 For the meaning of 'parish', see PARA 534 note 3 ante.

2 Church Representation Rules, r 5 (1), contained in the Synodical Government Measure 1969, Sch. 3.

3 For the meaning of 'lay', see the Church Representation Rules, r 44 (2), and PARA 591 note 5 post.

4 As to the church electoral roll, see PARA 591 et seq post.

5 Church Representation Rules, r 5 (2). This may have the effect of excluding some of the persons entitled to attend and take part in the meeting of parishioners for the choosing of churchwardens (which in practice is usually held immediately before the annual parochial church meeting): see PARA 545 ante.

6 Ibid r 5 (3) (a).

7 Ibid r 5 (3) (b). As to group ministries, see PARA 872 post. See also the Pastoral Measure 1968, s 20 (5), Sch. 3 para 3 (5), and PARA 872 post. All vicars in a team ministry are entitled to attend the parochial church meetings of the parish or each of the parishes in the area of the benefice for which the team ministry is established: see s 19 (10), Sch. 3 para 3 (3), and PARA 871 post.

8 The residence must be of a regular, not casual, nature: Church Representation Rules, r 44 (5).

9 Ibid r 5 (3) (c). However, he is not entitled to vote in the election of any parochial representatives of the laity: r 10 (5). Residentiary and minor canons of a parish church cathedral are, it seems, entitled to attend the annual parochial church meeting of the parish of that cathedral, even though they are not qualified under r 5 (3): see the Cathedrals Measure 1963, s 45, which refers to the Rules for the Representation of the Laity, now replaced by the Church Representation Rules.

10 For the meaning of 'minister', see PARA 544 note 6 ante. During the vacancy of the benefice or curacy or when the minister is absent or incapacitated by illness or any other cause, the vice-chairman of the parochial church council, or if there is no vice-chairman, or if he is unable or unwilling to act, the secretary of or some

other person appointed by that council, has all the powers vested in the minister under the Church Representation Rules, r 6: see r 6 (3).

11 For the prescribed form of notice, see *ibid* App. 1, s 4 (amended by S.I. 1973 No. 1865).

12 For the meaning of 'public worship', see PARA 545 note 8 ante.

13 Church Representation Rules, r 6 (1). The meeting must be held at such place (being a place within the parish unless the parochial church council decides otherwise: r 6 (4)) on such date and at such hour as is directed by the previous annual meeting or by the parochial church council (which may vary any direction given by a previous annual meeting) or, in the absence of any such direction, as is appointed by the minister (r. 6 (2)).

14 *Ibid* r 7. When there is an equal division of votes, otherwise than in the case of an election (as to which see PARA 566 post), the chairman of the meeting has a second or casting vote, but no clerical chairman has a vote in the election of the parochial representatives of the laity: r 7 (amended by S.I. 1973 No. 1865); see also r 10 (5), and PARA 566 note 11 post. For special provisions as to chairmanship in the case of a team ministry, see PARA 871 post.

15 *Ibid* r 8 (8).

16 *Ibid* r 8 (7).

17 *Ibid* r 43 (5). As to the bishop's powers in such a case, see PARA 389 ante.

UPDATE

563 Annual parochial church meeting

NOTES--Rules 5-8 now rr 6-9; SI 1994/3118.

TEXT AND NOTES 6-9--A clerk in holy orders is also entitled to attend and take part if he is not resident in the parish and is not beneficed or licensed to any other parish, the parochial church council with the concurrence of the minister has declared him to be a habitual worshipper in the parish, such declaration being effective until the conclusion of the annual meeting in the year in which a new roll is prepared under r 2 or his ceasing to be a habitual worshipper in the parish, whichever is the earlier, but without prejudice to a renewal of such declaration, or if he is a co-opted member of the parochial church council in accordance with r 14(1)(h) (see PARA 569): r 6(3)(c), (d); SI 1984/1039; SI 1995/3243.

TEXT AND NOTE 7--Rule 5(3)(b) revoked: SI 1981/959. The provisions of the 1968 Measure referred to are not reproduced in the Pastoral Measure 1983; see instead r 6(4), (5); SI 1981/959. Now, without prejudice to r 6(2), (3), all the members of the team of a team ministry are entitled to attend, and take part in the proceedings of, the annual meeting of the parish or each of the parishes in the area of the benefice for which the team ministry is established, and where the area of a group ministry includes the area of a benefice for which a team ministry is established, all the vicars in that ministry are entitled to attend, and take part in the proceedings of, the annual meeting of each of the other parishes in the area for which the group ministry is established; and all the incumbents and priests in charge in a group ministry are entitled to attend, and take part in the proceedings of, the annual meeting of each of the parishes in the area for which the group ministry is established: r 6(4); SI 1981/959.

Where two or more benefices are held in plurality and a team ministry is, or is to be, established for the area of one of those benefices, then, if a pastoral scheme provides for extending the operation of the team ministry, so long as the plurality continues, to the area of any other benefice so held, r 6(4) has effect as if the references to the area of the benefice were references to the combined area of the benefices concerned: r 6(5); SI 1981/959.

NOTE 8--Rule 44(5) renumbered as r 54(6): SI 1980/178, SI 1994/3118.

NOTE 9--Rule 5(3)(c) now r 6(3)(b); r 10(5) now r 11(5): SI 1984/1039, SI 1994/3118. Cathedrals Measure 1963 s 45 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

TEXT AND NOTES 10-13--The minister of a new parish created by a pastoral scheme, or, in the absence of the minister, a person appointed by the bishops, must as soon as possible after the scheme comes into operation convene a special parochial church meeting, and, subject to r 7(6), these provisions relating to the convening and conduct of the annual meeting apply to such a special meeting: r 7(5); SI 1981/959. A special meeting so convened and held in the months of November or December may, if the meeting so resolves, be for all purposes the annual meeting for the succeeding year, and a special meeting so convened is in any event for all purposes the annual meeting for the year in which it is so convened and held: r 7(6); SI 1981/959.

NOTE 11--App 1 s 4 further amended by SI 1980/178, SI 1984/1039, SI 1989/2094, SI 1994/3118, SI 1995/3243, SI 2004/1889.

TEXT AND NOTE 14--Now r 8(1); SI 1981/959. It is subject to r 8(2); SI 1981/959, which provides that where a parish is in the area of a benefice for which a team ministry is established, and a vicar in that ministry is entitled to preside at an annual meeting of that parish by virtue of a provision in a pastoral scheme or the bishop's licence assigning to the vicar the duties, or a share in the duties, of the chairmanship of the annual meeting of that parish, then, if both he and the vice-chairman of the parochial church council are not present at that meeting, but the rector in that ministry is present, the rector must preside.

NOTES 15, 16--Rule 8(7), (8) now r 9(8), (9); SI 1995/3243.

NOTE 17--Rule 43 now r 53; SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(vi) Parochial Church Meetings/564. Business of the annual meeting.

564. Business of the annual meeting.

The annual parochial church meeting receives from the parochial church council and is free to discuss a copy or copies of the church electoral roll¹, annual reports on the council's proceedings² and on the financial affairs of the parish³, the council's audited accounts for the year ending on the previous 31st December⁴, an audited statement of the funds and property, if any, remaining in the council's hands at that date⁵, a report upon the fabric, goods and ornaments of the church or churches of the parish⁶, and a report on the proceedings of the deanery synod⁷.

The annual meeting must elect parochial representatives of the laity to the deanery synod (in every third year⁸) and to the parochial church council⁹, and it must elect sidesmen¹⁰. The elections are to be carried out in that order¹¹. The annual meeting must also appoint the auditors to the parochial church council¹².

Any person entitled to attend the annual meeting¹³ may ask any question about parochial church matters, or bring about a discussion of any matter of parochial or general church interest, by moving a general resolution or by moving to give any particular recommendation to the council in relation to its duties¹⁴.

1 Church Representation Rules, r 8 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to the church electoral roll, see PARA 591 et seq post.

2 Ibid r 8 (1) (b).

3 Ibid r 8 (1) (c).

4 Ibid r 8 (1) (d). See also note 5 infra.

5 Ibid r 8 (1) (e). The audited accounts and the audited statement must be affixed on or near the principal door of every church and every building licensed for public worship in the parish at least seven days before the annual meeting: r 8 (2). They must be submitted to the annual meeting for approval and, if approved, must be signed by the chairman and then delivered to the parochial church council for publication, whereupon the council must cause them to be published and affixed on or near the principal door of every church in the parish and every building licensed for public worship in the parish and at such other conspicuous place or place in the parish as the council thinks appropriate: r 8 (3). As to the appointment of auditors, see the text and note 12 infra.

6 Ibid r 8 (1) (f).

7 Ibid r 8 (1) (g). As to deanery synods, see PARA 527 et seq ante.

8 Ibid r 8 (4) (a).

9 Ibid r 8 (4) (b). The annual meeting has power to make decisions in regard to the number of such representatives to be elected to the parochial church council, their term of office, and their qualification for further periods of service (rr. 12 (1) (f), 14, 15 (amended by S.I. 1973 No. 1865): see PARAS 569, 570 post); and as to the inclusion of readers in the membership of the council (r. 12 (1) (d) (substituted by S.I. 1973 No. 1865): see PARA 569 post). As to the election of representatives to district church councils and group councils, see PARAS 871, 872 post.

10 Ibid r 8 (4) (c).

11 Ibid r 8 (4). As to the qualifications of candidates and the conduct of elections, see PARA 566 post. As to sidesmen generally, see PARA 557 ante.

12 Ibid r 8 (5). See also PARA 571 post.

13 See PARA 563 ante.

14 Ibid r 8 (6). In the exercise of its functions the council must take into consideration any expression of opinion by any parochial church meeting: Parochial Church Councils (Powers) Measure 1956, s 2 (3); Synodical Government Measure 1969, s 6.

UPDATE

564 Business of the annual meeting

TEXT AND NOTES--Rule 8 now r 9; SI 1994/3118.

TEXT--Without prejudice to these provisions and r 7(6) (para 563), a special parochial church meeting convened under r 7(5) (para 563), must, in addition to other business, decide on the number of members of the parochial church council who are to be the elected representatives of the laity, and elect in the manner provided by r 11 (see PARA 566) parochial representatives of the laity to the deanery synod, if such representatives are required to be elected in the year for which that meeting is the annual meeting by virtue of r 7(6): r 9(6); SI 1981/959.

TEXT AND NOTE 1--Reference to copies of the church electoral roll now reference to a report on changes in the roll since the last annual parochial church meeting or, in a year in which a new roll is prepared, a report on the numbers entered on the new roll: r 9(2).

TEXT AND NOTES 2-5--Now the parochial church meeting receives an annual report on the proceedings of the parochial church council and the activities of the parish generally, and the financial statements of the parochial church council for the year ending on 31 December immediately preceding the meeting, independently examined or audited as provided by r 9(3): r 9(1)(b), (c); SI 1995/3243.

NOTE 5--Now the council must cause a copy of the church electoral roll to be available for inspection at the meeting: r 9(2); SI 1995/3243. The financial statements must (a) be independently examined or audited in the prescribed manner (ie in accordance with r 54(8)), (b) be considered and, if thought fit, approved by the parochial church council and signed by the chairman presiding at the meeting of the council, and (c) be displayed for a continuous period of at least seven days before the annual meeting, including at least one Sunday when the church is used for worship, on a notice board either inside or outside the church: r 9(3); SI 1995/3243. The annual report and financial statements must be prepared in the prescribed form (ie in accordance with r 54(8)) for consideration by the annual meeting: r 9(4); SI 1995/3243. Following such meeting the council must cause the copies of the annual report and statements to be sent within 28 days of the annual meeting to the secretary of the diocesan board of finance for retention by the board: r 9(4) (amended by SI 2004/1889).

Any matters or regulations to be prescribed must be prescribed by the Business Committee of the General Synod in accordance with the following procedure: r 54(8) (a); SI 1995/3243; National Institutions Measure 1998 Sch 5 para 2(e). Any matters or regulations made under this provision must be laid before the General Synod and must not come into force until they have been approved by the General Synod, whether with or without amendment: r 54(8)(b). Where the Business Committee determines that matters or regulations made under this provision do not need to be debated by the General Synod then, unless (i) notice is given by a member of the General Synod in accordance with standing orders that he wishes the business to be debated, or (ii) notice is so given by any such member that he wishes to move an amendment to the

business, the matters or regulations are for the purpose of head (b) above deemed to have been approved by the General Synod without amendment: r 54(8)(c), as amended.

NOTES 6, 7--Rule 8(1)(f), (g) now r 9(1)(d), (e); SI 1995/3243.

TEXT AND NOTE 6--The report is now made under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 5 (see PARA 553B): Sch 7.

TEXT AND NOTES 8-12--Now the annual meeting must (a) elect in every third year parochial representatives of the laity to the deanery synod, (b) elect parochial representatives of the laity to the parochial church council, (c) appoint sidesmen, (d) appoint the independent examiner or auditor to the council for a term of office ending at the close of the next annual meeting, provided that such person must not be a member of the council: r 9(5); SI 1995/3243. 'Auditor' means a person eligible as the auditor of a charity under the Charities Act 1993 s 43(2); 'independent examiner' means a person as defined in the 1993 Act s 43(3)(a): r 54(1); SI 1995/3243. An independent examiner or auditor of the council's financial statements must (a) have a right of access with respect to books, documents or other records (however kept) which relate to the said financial statements, (b) have a right to require information and explanations from past or present treasurers or members of the council and, in case of default, the independent examiner or auditor may apply to the Charity Commissioners for an order for directions pursuant to the Charities Act 1993 s 44(2) or any statutory modification thereof for the time being in force: App II para 16; SI 1995/3243.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(vi) Parochial Church Meetings/565. Power to make schemes.

565. Power to make schemes.

In any parish where there are two or more churches or buildings licensed for public worship the annual parochial church meeting may make a scheme providing for either or both of the following purposes (1) the election of representatives of the laity to the parochial church council in such manner as to ensure due representation of the congregation of each such church or building¹, and (2) the election of district church councils for any district in the parish in which such a church or building is situated².

No such scheme is valid unless approved by at least two-thirds of the persons present and voting at the annual meeting, nor can it be operative until the next ensuing annual meeting; and the bishop's council and standing committee of the diocesan synod may determine that the scheme is not to come into operation³.

1 Church Representation Rules, r 16 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Ibid r 16 (1) (b) (amended by S.I. 1973 No. 1865). A scheme for this purpose must provide for the election of representatives of the laity to the district council, for ex officio members and for the chairmanship of the council, and it must contain such other provisions as to membership and procedure as are considered appropriate by the annual meeting: r 16 (2). It may also provide for the delegation by the parochial church council to a district church council of such functions as the scheme may specify; and, subject to the scheme, the parochial church council may itself delegate to a district council such of its functions as it thinks fit: r 16 (3). Such a scheme may also provide for the election or choice of one or two deputy church wardens in respect of any such church or building and for the delegation to him or them of certain function: r 16 (4); see PARA 549 ante.

3 Ibid r 16 (5). Every scheme under r 16 must, on its approval, be communicated to the secretary of the diocesan synod, who may, if he considers it appropriate, lay the scheme before the bishop's council and standing committee: r 16 (5). Rule 16 is without prejudice to the provisions of the Pastoral Measure 1968, Sch. 3: see the Church Representation Rules, r 16 (6).

UPDATE

565 Power to make schemes

NOTES--Rule 16 now renumbered as r 18: SI 1994/3118.

TEXT AND NOTE 1--For 'buildings licensed for public worship', read 'places of worship': r 18(1)(a); SI 1981/959. 'Place of worship' means a building or part of a building licensed for public worship: r 18(11); SI 1981/959; SI 1984/1039.

TEXT AND NOTE 2--For head (2), read 'the election by the annual meeting for any district in the parish in which a church or place of worship is situated of a district church council for that district': Church Representation Rules r 18(1)(b); SI 1981/959.

NOTE 2--A scheme may not, however, provide for the delegation of the functions of a parochial church council (1) in respect of producing the financial statement of the parish; (2) as an interested party under the Pastoral Measure 1983 Pt I; (3) under the Priests (Ordination of Women) Measure 1993 s 3 (amended by the Cathedrals Measure 1999 s 39(1), Sch 2 para 9); or (4) under the Patronage (Benefices) Measure 1986 Pt II: Church Representation Rules r 18(3); SI 1998/319; Synodical Government

(Amendment) Measure 2003 Schedule para 6(a). Rule 18(4) now provides that such a scheme may provide for the election or choice of one or two deputy churchwardens and for the delegation to him or them of certain functions: SI 1981/959; SI 1984/1039.

TEXT AND NOTE 3--Now no such scheme is valid unless so appointed, nor may it provide for it to come into operation until such date as the bishop's council and standing committee may determine, being a date not later than the next ensuing annual meeting: r 18(5); SI 1984/1039.

Where a pastoral scheme establishing a team ministry, or an instrument of the bishop made by virtue of that scheme, makes, in relation to a parish in the area of the benefice for which the team ministry is established, any provision which may be made by a scheme under r 18, no scheme under r 18 relating to that parish may provide for the scheme to come into operation until on or after the date on which the provisions in question of the pastoral scheme or of the instrument, as the case may be, cease to have effect: r 18(7); SI 1981/959; SI 1984/1039.

A scheme under r 18 may be varied or revoked by a subsequent scheme: r 18(8); SI 1981/959; SI 1984/1039.

Every member of the team of a team ministry has a right to attend the meetings of any district church council elected for any district in a parish in the area of the benefice for which the team ministry is established: r 18(9); SI 1981/959; SI 1984/1039.

NOTE 3--Now every scheme under r 18 must on its approval be communicated to the bishop's council and standing committee of the diocesan synod, which may determine that the scheme is to come into operation, or that it is not to come into operation, or that it is to come into operation with specified amendments, if such amendments are approved by an annual or special parochial church meeting and the scheme as amended is approved by at least two-thirds of the persons present and voting at that meeting: r 18(5); SI 1984/1039. A special parochial church meeting of a parish to which r 18 applies may be convened for the purpose of deciding whether to make such a scheme; and the provisions of r 18(1)-(5) then have effect, if a meeting is convened, with the substitution of references to the special meeting for references to the annual meeting: r 18(6); SI 1989/2094, SI 1998/319; Synodical Government (Amendment) Measure 2003 Schedule para 6(c). Rule 18 is without prejudice to the appointment, in parishes with more than one parish church, of two churchwardens for each church under Pastoral Measure 1983 s 27(5) (see PARA 538): r 18(10); SI 1981/959; SI 1984/1039.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(vi) Parochial Church Meetings/566. Elections at annual meetings.

566. Elections at annual meetings.

The qualifications of a person to be elected as a parochial representative of the laity to the deanery synod or to the parochial church council are that (1) his name is entered on the church electoral roll of the parish¹; (2) he is an actual communicant member of the Church of England² or, in the case of election to the parochial church council, of any church in communion with the Church of England³; and (3) in the case of election to the deanery synod⁴, he is of eighteen years or upwards⁵. The qualification of a person to be elected a sidesman is that his name is entered on the church electoral roll of the parish⁶. No person is to be elected as a parochial representative of the laity to the deanery synod or the parochial church council, or as a sidesman, unless he has signified his consent to serve or there is in the opinion of the meeting sufficient evidence of his willingness to serve⁷.

All candidates for election at an annual meeting must be nominated and seconded by persons who are entitled to attend the meeting⁸ and, in the case of parochial representatives of the laity, whose names are on the church electoral roll of the parish⁹. If the number of candidates nominated is not greater than the number of seats to be filled the candidates nominated must forthwith be declared elected¹⁰; if more candidates are nominated than there are seats to be filled the election must take place at the annual meeting¹¹.

Each person entitled to vote has as many votes as there are seats to be filled, but may not give more than one vote to any one candidate¹². Votes may be given on voting papers (which must be signed by the voter)¹³ or, if no person present objects, by show of hands¹⁴. Where owing to an equality of votes an election is not decided, the decision between the persons for whom the equal numbers of votes have been cast must be taken by lot¹⁵. The result of the election must be announced as soon as practicable by the person presiding, and notice of the result must be displayed in the prescribed manner¹⁶.

Any person aggrieved may appeal against the allowance or disallowance of any vote or against the result of an election by giving notice of appeal to the rural dean or, if there is no rural dean, to the archdeacon¹⁷.

Casual vacancies among the parochial representatives elected to the parochial church council or the deanery synod may be filled by the election by the parochial church council of persons qualified to be so elected¹⁸.

1 Church Representation Rules, r 9 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to the church electoral roll, see PARA 591 et seq post. A person whose name is entered on the roll of each of two or more parishes must choose one of those parishes for the purpose of qualification for election to a deanery synod: r 1 (3) (substituted by S.I. 1973 No. 1865).

2 For the meaning of 'actual communicant member of the Church of England', see *ibid* r 44 (1) (amended by S.I. 1973 No. 1865), and PARA 420 note 1 ante.

3 *Ibid* r 9 (1) (b) (amended by S.I. 1973 No. 1865). 'Actual communicant member of a church in communion with the Church of England' means a communicant member of a church in communion with the Church of England (see PARA 313 ante) who has received Communion according to the use of the Church of England or of a church in communion with the Church of England at least three times during the twelve months preceding the date of his election: r 44 (1) (amended by S.I. 1973 No. 1865). If any question arises whether a church is a church in communion with the Church of England it is to be conclusively determined for the purposes of the Church Representation Rules by the Archbishops of Canterbury and York: r 44 (4) (amended by S.I. 1973 No. 1865).

4 In the case of election to the parochial church council the age is seventeen, ie the minimum age for entry on the church electoral roll: see r 1 (2) (c).

5 Ibid r 9 (1) (c) (amended by S.I. 1973 No. 1865). The diocesan registrar is not, however, qualified for election to the deanery synod or the parochial church council: r 9 (1) proviso (amended by S.I. 1973 No. 1865). A person is not disqualified from being elected to either body by the fact that he is also a member ex officio: r 38 (amended by S.I. 1973 No. 1865).

6 Ibid r 9 (2).

7 Ibid r 9 (3).

8 As to the persons so entitled, see PARA 563 ante.

9 Church Representation Rules, r 10 (2). A candidate must be nominated or seconded either before the meeting in writing or at the meeting: r 10 (2). Rule 10 applies to all elections at annual parochial church meeting: r 10 (1).

10 Ibid r 10 (3).

11 Ibid r 10 (4). No clerk in holy orders is entitled to vote in the election of any parochial representatives of the laity: r 10 (5).

12 Ibid r 10 (6).

13 Ibid r 10 (7) (a).

14 Ibid r 10 (7) (b).

15 Ibid r 10 (8).

16 Ibid r 10 (9). The notice must be affixed on or near the principal door of every church and every building licensed for public worship in the parish, and must remain there for not less than fourteen days: r 10 (9). Returns of parochial representatives of the laity elected to the deanery synod must be sent to the secretary of that synod: r 10 (10).

17 See ibid r 36 (amended by S.I. 1973 No. 1865), and PARA 596 post. For the bishop's special powers in relation to elections, see PARA 389 ante.

18 Ibid r 39 (1) (substituted by S.I. 1973 No. 1865); see PARA 529 ante.

UPDATE

566 Elections at annual meetings

NOTES--Rules 9, 10 now rr 10, 11 (amended by SI 1994/3118).

TEXT AND NOTES 1-5--Replaced. Subject to the provisions of r 1(4) (see PARA 591) and r 10(3), the qualifications of a person to be elected a parochial representative of the laity to either the parochial church council or the deanery synod are that (a) his name is entered on the roll of the parish and, unless he is under the age of eighteen years at the date of the election, has been so entered for at least the preceding period of six months, (b) he is an actual communicant (as defined; see PARA 420), and (c) he is of 16 years or upwards: r 10(1) (amended by the Synodical Government (Amendment) Measure 2003 Schedule para 2; SI 2004/1889).

NOTE 1--Rule 1(3) renumbered as r 1(4): SI 1994/3118; SI 1995/3243.

NOTE 3--Rule 44(4) renumbered r 54(5): SI 1980/178, SI 1994/3118.

NOTE 4--Minimum age now sixteen: r 1(2); SI 1994/3118.

NOTE 5--Rule 38 now r 47; SI 1994/3118.

TEXT AND NOTE 6--For 'elected' read 'appointed': r 10(2); SI 1994/3118.

TEXT AND NOTE 7--Replaced. No person must be nominated for election (a) to serve on either the parochial church council, or the deanery synod unless he has signified his consent to serve, or there is in the opinion of the meeting sufficient evidence of his willingness to serve; (b) to serve on the parochial church council, if he has been disqualified from serving on that council by the bishop under the Incumbents (Vacation of Benefices) Measures 1977 and 1993 s 10(6) (see PARA 733F); (c) to serve on the parochial church council if he is disqualified from being a charity trustee under the Charities Act 1993: r 10(3).

TEXT AND NOTES 8-16--These provisions are now subject to the provisions of any resolution made under r 12 (infra) and for the time being in force: r 11(1); SI 1980/178, SI 1994/3118. Rule 12; SI 1980/178, SI 1984/1039, SI 1990/2094, SI 1994/3118 empowers the annual meeting to pass a resolution providing for elections to be conducted by the method of the single transferable vote and enables arrangements for postal voting at annual parochial church meetings to be made. For form of application for postal vote, see App 1 s 4A; SI 1989/2094.

TEXT AND NOTE 13--Votes may be given by show of hands or, if one or more persons object, on voting papers signed by the voter on the reverse thereof or, if at least one tenth of the persons present and voting at the meeting so request, on numbered voting papers: Church Representation Rules r 11(7) (substituted by SI 2004/1889). Where, in accordance with the Church Representation Rules r 11(7), a vote is given on numbered voting papers, a record must be made of the identity of each person to whom a numbered voting paper is issued and any such record, so long as it is retained, must be kept separate from the voting papers: r 11(11) (added by SI 2004/1889).

TEXT AND NOTE 15--Rule 11(8) (as renumbered) now r 11(8)(a). When an election or any stage of an election is recounted, either on appeal or at the request of the presiding officer or of a candidate, if the original count and the recount are identical at the point when a lot must be drawn to resolve a tie, the original lot must be used to make the determination: r 11(8)(b); SI 1994/3118.

NOTE 16--The secretary of the parochial church council must hold a list of the names and addresses of the members of the council which must be available for inspection on reasonable notice being given by any person who either is resident in the parish or has his name on the electoral roll, but the secretary is not bound to provide a copy of the list: r 11(9); SI 1989/2094.

Rule 11(10) (as renumbered) substituted. Now names and addresses of parochial representatives of the laity elected to the deanery synod must be sent by the secretary of the parochial church council to the diocesan electoral registration officer appointed in accordance with r 29 (see PARA 511) and to the secretary of the deanery synod: r 11(10); SI 1989/2094.

TEXT AND NOTE 18--Rule 48(1) (formerly r 39(1)) now substituted by SI 1989/2094, SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(9) PARISHES/(vi) Parochial Church Meetings/567. Special and extraordinary meetings.

567. Special and extraordinary meetings.

In addition to the annual parochial church meeting the minister may convene a special parochial church meeting, and he must do so on a written representation by not less than one-third of the lay members of the parochial church council¹. On a written representation made to the archdeacon by not less than one-third of the lay members of the council or by one-tenth of the persons whose names are on the church electoral roll² of the parish, and deemed by the archdeacon to have been made with sufficient cause, the archdeacon must convene an extraordinary parochial church meeting, and must either take the chair himself or appoint a chairman to preside³. The persons entitled to attend any such special or extraordinary meeting are those entitled to attend the annual meeting⁴.

Where a new parish is created by a pastoral scheme⁵ the incumbent must as soon as possible take all necessary steps to convene a special parochial church meeting⁶ which must, in addition to any other business, elect representatives of the laity to the parochial church council and the deanery synod⁷.

1 Church Representation Rules, r 18 (1), contained in the Synodical Government Measure 1969, Sch. 3. For the meaning of 'minister', see PARA 544 note 6 ante; and for the meaning of 'lay', see PARA 591 note 5 post.

2 As to the church electoral roll, see PARA 591 post.

3 Church Representation Rules r 18 (2). The chairman, not being otherwise entitled to attend the meeting, is not entitled to vote on any resolution: r 18 (2). Where the archdeacon is himself the minister, any representation under r 18 (2) must be made to the bishop, and in any such case the references to the archdeacon in r 18 (2) are to be construed as references to the bishop or to a person appointed by him to act on his behalf: r 18 (3).

4 Ibid r 18 (4).

5 See PARA 537 ante, 856 et seq post.

6 Pastoral Measure 1968, Sch. 3 para 12 (1) (b). The incumbent is required to act in accordance with the provisions of the Church Representation Rules: Pastoral Measure 1968, Sch. 3 para 12 (1). A special meeting so convened and held in November or December may, if the meeting so resolves, be for all purposes under the Church Representation Rules the annual parochial church meeting for the succeeding year, and a special meeting so convened is in any event for all such purposes the annual parochial church meeting for the year in which it is so convened and held: Pastoral Measure 1968, Sch. 3 para 12 (3).

7 Ibid Sch. 3 para 12 (2); Synodical Government Measure 1969, s 2 (2).

UPDATE

567 Special and extraordinary meetings

NOTES 1-4--Rule 18 now r 22; SI 1994/3118.

NOTE 3--Now r 23(1), (2); SI 1989/2094, SI 1994/3118.

TEXT AND NOTE 4--Now all lay persons whose names are entered on the roll of the parish on the day which is 21 clear days before the date on which any special or extraordinary parochial church meeting is to be held are entitled to attend the meeting and to take part in its proceedings, and no other lay person is so entitled: Church

Representation Rules rr 22(2), 23(3); SI 1989/2094. A clerk in Holy Orders is entitled to attend any such meeting and to take part in its proceedings if by virtue of r 6(3), (4) or (5) (see PARA 563) he would have been entitled to attend the annual meeting of the parish had it been held on the same date, and no other such clerk is so entitled: r 22(3); SI 1981/2094.

TEXT AND NOTES 5-7--Now a pastoral scheme which creates a new parish may make provision, or authorise the bishop by instrument under his hand to make provision, for ensuring that the congregation of every church or place of worship in the new parish will have its own elected representatives of the laity on the parochial church council of that parish: Pastoral Measure 1983 Sch 3 para 12(1). Any provision included in a pastoral scheme or the bishop's instrument by virtue of these provisions will cease to have effect at the expiration of such period as may be specified in the scheme or instrument, as the case may be, being a period which does not exceed five years beginning with the date on which the new parish comes into being, and that period may not be extended or renewed by a subsequent pastoral scheme or instrument of the bishop: Sch 3 para 12(2). Any such provision has effect notwithstanding anything in the Church Representation Rules: Sch 3 para 12(3).

See also Church Representation Rules rr 7(5), (6), 9(6); SI 1981/959, PARAS 563, 564.

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(vii) Parochial Church Councils

A. HISTORY, CONSTITUTION AND MEMBERSHIP

568. Church councils in parishes.

The body constituting the council of the parish for ecclesiastical purposes was formerly the vestry¹, which was composed of the incumbent or curate-in-charge and the persons of both sexes who were rated to the general rate in respect of the parish, whether resident there or not, and the occupiers of hereditaments so rated². In addition to its ecclesiastical business, which included the election of church-wardens and sidesmen, the vestry exercised certain powers relating to civil matters.

In consequence of a succession of enactments in the last hundred years, vestries have been rendered virtually obsolete³, and the council of the parish for ecclesiastical purposes is now the parochial church council, composed of persons whose qualifications include church membership⁴. Legal provision for the establishment of parochial church councils in all parishes was introduced by the Church of England Assembly (Powers) Act 1919, and the Parochial Church Councils (Powers) Measure 1921⁵ defined the powers, duties and liabilities of the councils⁶. Their functions have been considerably extended by subsequent legislation, and provision has also been made for the establishment in certain cases of joint parochial church councils⁷, district church councils⁸ and group councils⁹. Provisions governing the constitution of parochial church councils are contained in the Church Representation Rules¹⁰.

The Parochial Church Councils (Powers) Measure 1956, which repealed and replaced the Measure of 1921, extends to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man¹¹.

1 *Wilson v M' Math* (1819) 3 Phillim 67 at 82. It took its name from the room in the church where the priest put on his vestments: *Wilson v M' Math* supra.

2 In some parishes the powers of the general vestry were exercised by a select vestry, consisting of a limited body of parishioners, which might exist by immemorial custom, by a local Act of Parliament or by adoption of the Vestries Act 1831.

3 The civil functions of vestries were assigned to local government bodies by the Local Government Act 1894, s 6 (rural parishes), the London Government Act 1899 (repealed), the Welsh Church Act 1914, s 25, and the Local Government Act 1933, s 269 (repealed) (urban parishes): see LOCAL GOVERNMENT vol 69 (2009) PARA 4; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 2. Their ecclesiastical functions were largely transferred to parochial church councils (see PARA 574 et seq post), but in relation to the choosing of church-wardens vestries retained their former powers until they were superseded by the meetings of parishioners held in accordance with the Churchwardens (Appointment and Resignation) Measure 1964 (see PARA 545 ante). Such provisions of the Vestries Acts 1818 to 1853 as remain unrepealed (ie the Vestries Act 1818, ss 1-4, 7-11; Vestries Act 1819, ss 1-3; Vestries Act 1831, ss 1-38, 40-43), relating largely to elections, voting rights and accounts and audit, appear to have virtually no application at the present day, although one or two vestries remain in existence for limited purposes.

4 See PARA 569 post.

5 See the Church of England Assembly (Powers) Act 1919, Appendix, art. 17 (b), Schedule para 2 (1) (i) (repealed).

6 See PARA 574 et seq post. To a large extent they were made the successors to other bodies; thus many of the powers, duties and liabilities of vestries, churchwardens and church trustees were transferred to the new councils with effect from 1st July 1921: see PARAS 575-577 post.

7 Pastoral Measure 1968, s 41, Sch. 3 para 13: see PARA 573 post.

8 Ibid s 19 (1), Sch. 3 para 3 (2) (a) (see PARA 871 post); Church Representation Rules, r 16, contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865): see PARA 565 ante.

9 Pastoral Measure 1968, ss 19 (10), 20 (5), Sch. 3 para 3 (4): see PARA 871 post.

10 See PARA 569 et seq post. As to the Church Representation Rules, see PARA 389 ante.

11 Parochial Church Councils (Powers) Measure 1956, s 10 (3). It may, however, be extended to the Isle of Man if an Act of Tynwald so provides, subject to such modifications, if any, as such an Act may specify: s 10 (3) proviso.

UPDATE

568 Church councils in parishes

NOTES 2, 3--Vestries Acts 1818, 1819, 1831 and 1853 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 7--Consolidated in Pastoral Measure 1983; see s 40, Sch 3 para 13.

NOTE 8--See now ibid s 20(1), Sch 3 para 4(2)(b) (district church councils) and PARA 4(3) (team councils) (see PARA 871).

NOTE 9--See now ibid s 21(5), Sch 3 para 4(4) (PARA 872).

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569. Status and composition of parochial church council.

The council is a body corporate by the name of the parochial church council of the parish for which it is appointed, and has perpetual succession¹. It consists of (1) all clerks in holy orders beneficed in or licensed to the parish, including in the case of a team ministry all vicars in the team²; (2) any deaconess or woman worker licensed to the parish or any male lay worker licensed to the parish and receiving a stipend in respect of work for the cure of souls in the parish³; (3) the churchwardens, being actual communicant members of the Church of England⁴ whose names are on the church electoral roll of the parish⁵; (4) such, if any, of the readers whose names are on the church electoral roll of the parish as the annual meeting may determine⁶; (5) all persons whose names are on the church electoral roll of the parish and who are lay members of the General Synod or any diocesan or deanery synod⁷; (6) such number of representatives of the laity as the annual meeting may decide⁸; and (7) co-opted members, if the parochial church council so decides, not exceeding in number one-fifth of the representatives of the laity elected to the council, and being either clerks in holy orders or actual lay communicant members of the Church of England⁹ of seventeen years of age or upwards¹⁰.

¹ Parochial Church Councils (Powers) Measure 1956, s 3. This does not, however, apply where the council's functions have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4) (b). For the meaning of 'parish', see PARA 534 note 3 ante.

² Church Representation Rules, r 12 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to team vicars, see the Pastoral Measure 1968, Sch. 3 para 3 (3). Incumbents in a group ministry may attend meetings of the parochial church council of all the parishes in the area for which the group ministry is established; they are entitled to receive documents circulated to members of councils of which they are not themselves members and to speak, but not to vote, at meetings of such councils: Church Representation Rules, r 12 (3); see also the Pastoral Measure 1968, Sch. 3 para 3 (5), and PARA 872 post.

³ Church Representation Rules, r 12 (1) (b). As to deaconesses, see PARA 759 et seq post; as to women workers, see PARA 767 post.

⁴ For the meaning of 'actual communicant member of the Church of England', see PARA 420 note 1 ante.

⁵ Church Representation Rules, r 12 (1) (c). As to the electoral roll, see PARA 591 et seq post.

⁶ Ibid r 12 (1) (d) (substituted by S.I. 1973 No. 1865). As to readers, see PARA 762 et seq post. The intention appears to be, not that readers should, by decision of the annual meeting, become members of the council of ex officio, but that they should be individually selected. The procedure would presumably be one of 'choosing' rather than 'election'; cf. the wording of r 39 (8) (amended by S.I. 1973 1865), which uses both terms. In the absence of specific provision it appears that the term of office of such members would be until of the next annual meeting (cf. the provision applicable to elected representatives of the laity (r. 14 (1)) and co-opted members (r. 12 (1) (g)), and see PARA 570 post). As to the annual meeting, see PARA 563 et seq ante.

⁷ Ibid r 12 (1) (e). See, however, r 35 (3) proviso, which provides that no ex officio or co-opted member of the House of Laity of the General Synod is, by reason of such membership, to be a member of any other body constituted under the Church Representation Rules. As to the General Synod, see PARA 390 et seq ante; as to diocesan synods, see PARA 503 et seq ante; and as to deanery synods, see PARA 527 et seq ante. For the meaning of 'lay', see PARA 591 note 5 post.

⁸ Ibid r 12 (1) (f). As to the annual meeting, see PARA 563 et seq ante. The number determined may be altered from time to time by a resolution passed at any annual meeting, but such a resolution does not take effect before the next ensuing annual meeting: r 12 (1) (f). As to the election of these representatives of the laity, the qualifications of candidates, casual vacancies, etc., see PARAS 564, 566 ante. In a parish having two or more churches or buildings licensed for public worship the annual meeting may be scheme provide for the

election of representatives of the laity in such manner as to ensure due representation of each congregation: see PARA 565 ante.

9 See note 4 supra. It is apparently not necessary that a co-opted member should have his name on the church electoral roll: see *Opinions of the Legal Board* (5th Edn 1973) 1/43.

10 Church Representation Rules, r 12 (1) (g). As to the term of office of co-opted members, see PARA 570 post.

UPDATE

569 Status and composition of parochial church council

NOTES--Rule 12 now r 14; SI 1994/3118, SI 1995/3243.

NOTE 1--Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1); Cathedrals Measure 1999 s 39(2), Sch 3.

TEXT AND NOTES 2-10--These provisions are subject to the provisions of r 1(3) (see PARA 591) and r 14(3): r 14(1); SI 1980/178, SI 1994/3118.

Any person chosen, appointed or elected as a churchwarden of a parish, being an actual communicant member of the Church of England whose name is on the roll of the parish, will, as from the date on which the choice, appointment or election is made, be a member of the parochial church council until he is admitted to the office of churchwarden, and will thereafter continue to be a member of that council by virtue of r 14(1)(d) (see TEXT AND NOTE 5) unless and until he ceases to be qualified for membership by virtue of r 14(1)(d): r 14(2); SI 1980/178.

The parochial church council must also include any clerk in Holy Orders who is duly authorised to act as chairman of meetings of the council by the bishop in accordance with App II r 5(b) (see PARA 589): r 14(1)(aa); Synodical Government (Amendment) Measure 2003 Schedule para 3.

TEXT AND NOTE 2--Words 'including in the case of a team ministry all vicars in the team' now omitted: Church Representation Rules r 14(1)(a); SI 1981/959. Provisions of 1968 Measure referred to not included in Pastoral Measure 1983; see now instead Church Representation Rules r 14(1)(c); SI 1981/959, SI 1995/3243, by virtue of which, in the case of a parish in the area of a benefice for which a team ministry is established, the parochial church council also includes all the members of the team of that ministry.

Church Representation Rules r 14(4) (as renumbered) amended to apply to the incumbents of all benefices in the group, every priest in charge of any benefice in it and where the area of the group ministry includes the area of a benefice for which a team ministry is established, all the vicars in that ministry: SI 1981/959.

Where two or more benefices are held in plurality and a team ministry is, or is to be, established for the area of one those benefices, then, if a pastoral scheme provides for extending the operation of the team ministry, so long as the plurality continues, to the area of any other benefice so held, Church Representation Rules r 14(1)(c) and (3) have effect as if the references to the area of the benefice were references to the combined area of the benefices concerned: r 14(5); SI 1981/959.

TEXT AND NOTE 3--Head (2) now any deaconess or lay worker licensed to the parish: r 14(1)(b); SI 1984/1039.

TEXT AND NOTES 4, 5--For 'actual communicant members of the Church of England' read 'actual communicants': r 14(1)(d).

NOTE 5--Rule 12(1)(c) now r 14(1)(d); SI 1995/3243.

TEXT AND NOTE 6--Head (4) now such, if any, of the readers who are licensed to the parish or licensed to an area which includes the parish and whose names are on the roll of the parish as the annual meeting may determine: r 14(1)(e).

TEXT AND NOTE 7--A person whose name is entered on the roll of each of two or more parishes must choose one of those parishes for the purpose of qualification for membership of a parochial church council under r 14(1)(f): r 1(4); SI 1980/178, SI 1994/3118. Rule 35(3) now r 42; SI 1994/3118.

TEXT AND NOTE 8--Rule 12(1)(f) now r 14(1)(g); SI 1995/3243; Synodical Government (Amendment) Measure 2003 Schedule para 4. Laity now represented as follows: 6 representatives of the laity where there are not more than 50 names on the electoral roll, 9 such representatives where there are not more than 100 names on the roll and, where there are more than 100 names on the roll, a further 3 such representatives for every 100 (or part thereof) names on the roll up to a maximum of 15 such members, and the numbers 6, 9, 3 and 15 may be altered from time to time by a resolution passed at any annual meeting, but not so as to take effect before the next ensuing annual meeting: r 14(1)(g) (as so amended). See also Pastoral Measure 1983 Sch 3 para 12(1)-(3) (see PARA 567).

TEXT AND NOTE 10--Under head (7), the number of co-opted members should not exceed one-fifth of the representatives of the elected laity or two persons whichever is the greater: r 14(1)(h); SI 1989/2094. For 'actual lay communicant members of the Church of England of seventeen years of age' read 'actual lay communicants of sixteen years of age': r 14(1)(h); SI 1994/3118.

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570. Period of membership.

Representatives of the laity¹ on the parochial church council hold office from the conclusion of the annual meeting until the conclusion of the next annual meeting of the parish², although the annual meeting may decide that one-third only (or the number nearest to one-third) of the representatives of the laity elected to the council are to retire from office in every year; where it is so decided the representatives to retire at each annual meeting are those who have been longest in office since last elected, and as between representatives elected on the same day the selection of those to retire, unless they otherwise agree among themselves, is made by lot³. A representative of the laity must in any event retire at the conclusion of the third annual meeting after that at which he was elected³.

Persons who are members of a council by virtue of their election as lay members of a deanery synod hold office for a term beginning with the date of their election and ending with 31st May next following the election of their successors⁴. A co-opted member holds office until the conclusion of the next annual meeting⁵.

The annual meeting may decide that no representative of the laity on the parochial church council may hold office for more than a specified number of years continuously, and may also decide that after a specified interval a person who has ceased to be eligible by reason of such a decision may again stand for election as a representative of the laity on the council⁶.

Provision is made for the termination of membership in certain cases otherwise than by effluxion of time. A member of the council may resign his membership by notice in writing signed by him and sent or given to the secretary of the council⁷. Any elected representative of the laity whose name is, under the relevant provisions⁸, removed from the church electoral roll forthwith ceases to be a member of the parochial church council⁹ except that where a person's name is removed from the roll at his own desire¹⁰ he does not cease to be a member of the council by virtue of that fact unless the council so resolves¹¹. No person is deemed to vacate his seat as an elected or chosen member of the council by reason only of the fact that subsequently to his election or choice he has become a member ex officio¹².

1 For the meaning of 'laity', see the Church Representation Rules, r 44 (2), contained in the Synodical Government Measure 1969, Sch. 3, and PARA 591 note 5 post.

2 Ibid r 14 (1) (amended by S.I. 1973 No. 1865). As to the annual meeting, see PARA 563 et seq ante.

3 Ibid r 14 (1) proviso (amended by S.I. 1973 No. 1865).

4 Ibid r 14 (2) (added by S.I. 1973 No. 1865).

5 Ibid r 12 (1) (g). However, this is without prejudice to his being co-opted on subsequent occasions for a similar term, subject to and in accordance with the provisions of the Church Representation Rules: r 12 (1) (g).

6 Ibid r 15.

7 Ibid r 40 (substituted by S.I. 1973 No. 1865).

8 See ibid r 1 (6), (7) (amended by S.I. 1973 No. 1865), and PARA 592 post.

9 Ibid r 12 (2). This is, however, without prejudice to any right the council may have to make him a co-opted member: r 12 (2).

10 Ibid r 1 (7) (c).

11 Ibid r 12 (2) proviso. As to removal from the roll at a person's own desire, see r 1 (7) (c), and PARA 592 post. As to the filling of casual vacancies, see PARA 566 ante.

12 Ibid r 38 (amended by S.I. 1973 No. 1865).

UPDATE

570 Period of membership

NOTES--Rules 12, 14, 15 now rr 14, 16, 17: SI 1994/3118.

TEXT AND NOTES 1-5--Replaced, and r 16 substituted: Synodical Government (Amendment) Measure 2003 Schedule para 5. Representatives of the laity serving on the parochial church council by virtue of r 14(1)(g) (see PARA 569) hold office from the conclusion of the annual meeting at which they were elected until the conclusion of the third annual meeting thereafter, one third retiring and being elected each year (determined by lot), but, subject to r 17, are eligible for re-election on retirement: r 16(1), (6). Where a representative of the laity resigns or otherwise fails to serve for his full term of office the casual vacancy must be filled for the remainder of his term of office in accordance with r 48(1): r 16(2). However, an annual meeting may decide that the representatives of the laity serving by virtue of r 14(1)(g) are to retire from office at the conclusion of the annual meeting next following their election, but any such decision (which must be reviewed at least every six years) does not affect the terms of office as members of the parochial church council of those due to retire from office at the conclusion of an annual meeting held after that at which the decision was taken: r 16(3), (4). Persons who are members of a parochial church council by virtue of their election as lay members of a deanery synod hold office as members of the council for a term beginning with the date of their election and ending with 31 May next following the election of their successors: r 16(5).

NOTE 7--Rule 40 now r 49; SI 1994/3118.

TEXT AND NOTES 8-11--Rule 12(2) now renumbered as r 14(3); SI 1994/3118. Now a person ceases to be a member of a parochial church council (a) if his name is removed from the roll of the parish under r 1 (see PARA 592), on the date on which his name is removed, (b) if he refuses or fails to apply for enrolment when a new roll is being prepared, on the date on which the new roll is completed, (c) if he is disqualified from being a charity trustee under the Charities Act 1993 or from serving on that parochial church council by the bishop under the Incumbents (Vacation of Benefices) Measures 1977 and 1993 s 10(6), on the date on which the disqualification takes effect: r 14(3); SI 1980/178, SI 1994/3118. So far as heads (a) and (b) are concerned, these provisions are without prejudice to any right which the council may have to make that person a co-opted member: r 14(3).

NOTE 12--Rule 38 now r 47; SI 1994/3118.

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571. Officers of the parochial church council.

The minister¹ of the parish is chairman of the parochial church council², and a lay member of the council must be elected as vice-chairman³. During a vacancy of the benefice and when the chairman is incapacitated by absence or illness or any other cause the vice-chairman acts as, and has all the powers vested in, the chairman⁴.

The council may appoint one of its number to act as secretary of the council, and if no member is appointed so to act the council must appoint some other fit person with such remuneration (if any) as it thinks fit⁵. The council may appoint one or more of its number to act as treasurer solely or jointly and, failing such appointment, the office of treasurer must be discharged jointly by such of the churchwardens as are members of the council⁶ or, if there is only one such churchwarden, by the churchwarden solely⁷.

The council must appoint a church electoral roll officer who may, but need not, be a member of the council and may be the secretary⁸. He has charge of the church electoral roll and acts under the council's direction for the purpose of carrying out its functions with regard to the roll⁹.

If auditors to the council are not appointed by the annual meeting¹⁰ or if auditors appointed by the annual meeting are unable or unwilling to act, auditors must be appointed by the council¹¹.

1 For the meaning of 'minister', see PARA 544 note 6 ante.

2 Church Representation Rules r 13, App. II para 1 (a), contained in the Synodical Government Measure 1969, Sch. 3. As to variation of the provisions of the Church Representation Rules, App. II, and its interpretation, see PARA 587 post. As to the chairmanship of meetings generally, see PARA 589 post.

3 Ibid App. II para 1 (b).

4 Ibid App. II para 1 (c).

5 Ibid App. II para 1 (d). The secretary has charge of all documents relating to the council's current business with the exception, unless he is the electoral roll officer (see *infra*), of the church electoral roll; he is responsible for keeping the minutes, must record all resolutions passed by the council, and must keep the secretary of the diocesan synod and deanery synod informed as to his name and address: App. II para 1 (d).

6 See PARA 569 ante.

7 Church Representation Rules, App. II para 1 (e). No remuneration may be paid to any person in respect of his appointment as treasurer: App. II para 1 (e).

8 Ibid App. II para 1 (f). If he is not a council member the council may pay him such remuneration as it thinks fit: App. II para 1 (f).

9 Ibid r 1 (5) (amended by S.I. 1973 No. 1865), App. II para 1 (f).

10 See PARA 564 ante.

11 Church Representation Rules, App. II para 1 (g). Their remuneration, if any, must be paid by the council: App. II para 1 (g).

UPDATE

571 Officers of the parochial church council

NOTE 1--For the purposes of App II para 1, where a special cure of souls in respect of a parish has been assigned to a vicar in a team ministry (see PARA 690), or where there has been no such assignment but a special responsibility for pastoral care in respect of the parish has been assigned to a member of the team under the Pastoral Measure 1983 s 20(8A) (see PARA 870), that vicar or that member, as the case may be, is deemed to be the minister unless incapacitated by absence or illness or any other cause, in which case the rector in the team ministry is deemed to be the minister: Church Representation Rules App II para 1(h), added by the Team and Group Ministries Measure 1995 s 11.

TEXT AND NOTE 4--Now during the vacancy of the benefice or when the chairman is incapacitated by absence or illness or any other cause or when the minister invites him to do so the vice-chairman acts as, and has all the powers vested in, the chairman: App II para 1(c); SI 1980/178.

TEXT AND NOTE 7--Now, failing an appointment by the council, the office of treasurer may also be discharged by some other fit person: App II para 1(e); SI 1994/3118.

NOTE 9--Rule 1(5) renumbered as r 1(7): SI 1994/3118.

TEXT AND NOTE 11--Replaced. Now if an independent examiner or auditor to the council is not appointed by the annual meeting or if an independent examiner or auditor appointed by the annual meeting is unable or unwilling to act, an independent examiner or auditor (who must not be a member of the council) must be appointed by the council for a term of office ending at the close of the next annual meeting: App II para 1(g); SI 1995/3243. The remuneration (if any) of the independent examiner or auditor must be paid by the council: App II para 1(g). For the meaning of 'auditor' and 'independent examiner', see PARA 564.

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572. Committees of the parochial church council.

The parochial church council has a standing committee which must consist of not less than five persons: the minister and such of the churchwardens as are members of the council¹ are ex officio members of the standing committee, and the council must by resolution appoint at least two other members to the committee from among its own members and may remove any person so appointed². Subject to any directions given by the council the standing committee has power to transact the council's business between council meetings³.

The council may appoint other committees for the purpose of the various branches of church work in the parish and may include in them persons who are not members of the council⁴. The minister is a member of all committees ex officio.

1 See PARA 569 ante.

2 Church Representation Rules, r 13, App. II para 14 (a), contained in the Synodical Government Measure 1969, Sch. 3. As to variation of the provisions in the Church Representation Rules, App. II, and its interpretation, see PARA 587 post.

3 Ibid App. II para 14 (b). The question of the extent of the executive power which can properly be exercised by the standing committee is considered in Opinions of the Legal Board (5th Edn 1973) 1/51.

4 Church Representation Rules, App. II para 15.

UPDATE

572 Committees of the parochial church council

NOTE 2--Unless removed from office, the appointed members hold office from the date of their appointment until the conclusion of the next annual meeting of the parish: App II para 14(a); SI 1989/2094.

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573. Joint, district and group councils.

Where there are two or more parishes within the area of a single benefice or two or more benefices are held in plurality, a pastoral scheme or order¹ may provide for constituting a joint parochial church council for all or some of the parishes of the benefice or benefices and for empowering that council to exercise such of the powers of the parochial church councils of the several parishes concerned as may be determined by or in accordance with the scheme or order; and the scheme or order may apply in relation to the joint parochial church council, with such modifications as may be specified, the provisions of any Measure relating to parochial church councils, and may make provision for vesting in the joint parochial church council any property, rights and liabilities of the parochial church councils of the several parishes concerned².

A pastoral scheme which establishes a group ministry³ or a team ministry⁴ covering more than one parish may make provision for the establishment of a group council comprising the members of the ministry and lay representatives of each parochial church council in the area⁵.

A pastoral scheme which establishes a team ministry may make provision for the election by the annual parochial church meeting of the parish or any of the parishes in the area concerned of a district church council for any district in which a church or place of worship is situated⁶.

Further, the annual parochial church meeting of any parish in which there are two or more churches or buildings licensed for public worship may make a scheme for the election of district church councils for any district in the parish in which a church or licensed building is situated⁷.

1 As to pastoral schemes and orders, see PARA 856 et seq post.

2 Pastoral Measure 1968, s 41, Sch. 3 para 13. In relation to a joint parochial church council so established the Church Representation Rules have effect subject to the pastoral scheme or order: r 17, contained in the Synodical Government Measure 1969, Sch. 3.

3 See PARA 872 post.

4 See PARA 870 et seq post.

5 Pastoral Measure 1968, Sch. 3 para 3 (4) (a): see PARAS 871, 872 post.

6 Ibid Sch. 3 para 3 (2) (a): see PARA 871 post.

7 Church Representation Rules, r 16 (1) (b) (amended by S.I. 1973 No. 1865): see PARA 565 ante.

UPDATE

573 Joint, district and group councils

TEXT AND NOTE 2--Now where a pastoral scheme provides for two or more parishes to be comprised in the area of a single benefice or a pastoral scheme or order provides for two or more benefices to be held in plurality, the scheme or order may make provision, or authorise the bishop by instrument under his hand with the concurrence of the incumbent of the benefice or benefices to make provision (a) for establishing a joint parochial church council for all or some of the parishes of the benefice or benefices, (b)

for the chairmanship, meetings and procedure of that council and (c) subject to the Patronage (Benefices) Measure 1986 Sch 2 para 20 (see PARA 818A.14), for the functions of the parochial church council of any such parish which must or may be delegated to the joint parochial church council, being provisions to the same effect as those which may be made by a scheme under the Church Representation Rules in the like case: Pastoral Measure 1983 Sch 3 para 13(1): 1986 Measure Sch 4 para 25.

Any provisions which are included in a pastoral scheme or order or the bishop's instrument by virtue of the above provisions will cease to have effect at the expiration of such period as may be specified in the scheme, order or instrument, being a period which does not exceed five years from the date on which the scheme or order, as the case may be, came into operation, and that period may not be extended or renewed by a subsequent pastoral scheme, pastoral order or instrument of the bishop: 1983 Measure Sch 3 para 13(2). Provision is also made for any provisions which were included in a pastoral scheme or order by virtue of Sch 3 para 13 as originally enacted to cease to have effect; see Sch 3 para 13(3).

Where the provisions of a pastoral scheme or order for the holding of benefices in plurality are terminated under s 18(2) (see PARA 853), any provision of a pastoral scheme or order or the bishop's instrument establishing a joint parochial church council for all or some of the parishes of those benefices and the other provisions of them affecting that council ceases to have effect on the date on which the first mentioned provisions cease to have effect: Sch 3 para 13(4).

NOTE 2--Church Representation Rules r 17, now renumbered as r 19 (SI 1994/3118), substituted by SI 1981/959; SI 1984/1039 and amended by the Patronage (Benefices) Measure 1986 Sch 4 para 13, the Priests (Ordination of Women) Measure 1993 Sch 3 para 3, and SI 2009/2129 it makes provision for the establishment of a joint parochial church council, where there are two or more parishes within the area of a single benefice or two or more benefices are held in plurality, by a joint scheme made by the annual meetings of all or some of the parishes in the benefice or benefices, corresponding to the provision made for the establishment of such a council by pastoral scheme or order; see TEXT AND NOTE 2.

TEXT AND NOTES 5, 6--Now a pastoral scheme which establishes a group ministry may make provision for the establishment of a group council, a pastoral scheme which establishes a team ministry for the area of a benefice which comprises a parish in which there are two or more churches or places of worship may make provision for the election of a district church council and a pastoral scheme which establishes a team ministry for the area of a benefice which comprises more than one parish may make provision for the establishment of a team council: 1983 Measure Sch 3 para 4(4), (2), (3); see PARAS 871, 872.

Church Representation Rules r 20 (formerly r 17A) (added by SI 1981/959, SI 1984/1039, SI 1989/2094, SI 1994/3118; and amended by the Patronage (Benefices) Measure 1986 Sch 4 para 13, the Priests (Ordination of Women) Measure 1993 Sch 3 para 3, and SI 2009/2129) makes provision for the establishment of a team council, where a team ministry is established for the area of a benefice which comprises more than one parish, by a joint scheme made by the annual meetings of the parish in that area, corresponding to the provision made for the establishment of a team council by a pastoral scheme.

Church Representation Rules r 21 (formerly r 17B) (added by SI 1981/959; 1984/1039, SI 1994/3118; and amended by the Patronage (Benefices) Measure 1986 Sch 4 para 13; the Priests (Ordination of Women) Measure 1993 Sch 3 para 3, and SI 2009/2129) makes provision for the establishment of a group council, where a pastoral scheme establishes a group ministry, by a joint scheme made by the annual meetings of the

parishes in the area for which the group ministry is established, corresponding to the provision made for the establishment of a group council by a pastoral scheme.

TEXT AND NOTE 7--The annual parochial church meeting of any parish in which there are two or more churches or places of worship may now make a scheme for the election by the annual meeting for any district in the parish in which a church or place of worship is situated of a district church council for that district: Church Representation Rules r 18(1)(b); SI 1981/959.

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B. DUTIES AND POWERS

(A) IN GENERAL

574. General functions of parochial church councils.

It is the duty of the incumbent¹ and the parochial church council to consult together on matters of general concern and importance to the parish². The council's functions include (1) co-operation with the incumbent in promoting in the parish the whole mission of the Church, pastoral, evangelistic, social and ecumenical³; (2) the consideration and discussion of matters concerning the Church of England or any other matters of religious or public interest, but not the declaration of the doctrine of the Church on any question⁴; (3) making known and putting into effect any provision made by the diocesan synod or the deanery synod⁵, but without prejudice to the powers of the council on any particular matter⁶; (4) giving advice to those synods on any matter referred to the council⁷; and (5) raising such matters as it considers appropriate with those synods⁸. In the exercise of its functions the council must take into consideration any expression of opinion by any parochial church meeting⁹.

1 'Incumbent' is not defined for the purposes of this provision; see however para 541 ante, and cf. the definition of 'minister' in the Parochial Church Councils (Powers) Measure 1956, s 1, which adopts that contained in the Rules for the Representation of the Laity, replaced by the Church Representation Rules, r 44 (1), contained in the Synodical Government Measure 1969, Sch. 3; see PARA 544 note 6 ante. The 'minister of the parish' is the chairman of the parochial church council: see the Church Representation Rules, App. II para 1 (a), and PARA 571 ante.

2 Parochial Church Councils (Powers) Measure 1956, s 2 (1); Synodical Government Measure 1969, s 6. This provision supersedes an earlier provision which declared it to be the primary duty of the council to co-operate with the minister in the initiation, conduct and development of church work. In *Re St Peter, Roydon* [1969] 2 All ER 1233 at 1235, [1969] 1 WLR 1849 at 1852, it was held by the Chelmsford Consistory Court, on the basis of that earlier provision, that in carrying out any particular duty the council must pay proper regard to the minister's wishes or suggestions but that, having done so, it must be free to differ from him if in its view the honest discharge of the particular duty, required it to do so. Such a proposition would be no less justified in the light of the revised wording of the section.

3 Parochial Church Councils (Powers) Measure 1956, s 2 (2) (a); Synodical Government Measure 1969, s 6.

4 Parochial Church Councils (Powers) Measure 1956, s 2 (2) (b); Synodical Government Measure 1969, s 6.

5 As to diocesan synods, see PARA 503 et seq ante; as to deanery synods, see PARA 527 et seq ante.

6 Parochial Church Councils (Powers) Measure 1956, s 2 (2) (c); Synodical Government Measure 1969, s 6.

7 Parochial Church Councils (Powers) Measure 1956, s 2 (2) (d); Synodical Government Measure 1969, s 6.

8 Parochial Church Councils (Powers) Measure 1956, s 2 (2) (e); Synodical Government Measure 1969, s 6.

9 Parochial Church Councils (Powers) Measure 1956, s 2 (3); Synodical Government Measure 1969, s

UPDATE

574 General functions of parochial church councils

TEXT AND NOTES 1, 3--For 'incumbent' read 'minister': Church of England, (Miscellaneous Provisions) Measure 1983 s 5. Rule 44 now r 54; SI 1994/3118.

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575. Transferred powers and duties of vestries.

The parochial church council of every parish¹ has the like powers, duties and liabilities as, immediately before 1st July 1921², the vestry³ of that parish had with respect to the affairs of the church, except as regards the election of churchwardens and sidesmen, and as regards the administration of ecclesiastical charities, but including the power of presentation to the benefice of the parish if the right to present to it was vested in or in trust for the parishioners⁴, and the power of making any voluntary church rate⁵.

1 Provision is made by the Cathedrals Measure 1963, s 12, for the transfer of the functions of the parochial church council (with some modifications) to the administrative body of a parish church cathedral, and where such transfer takes place a reference to the administrative body of the cathedral must be substituted for any reference to the parochial church council contained in the Parochial Church Councils (Powers) Measure 1956: Cathedrals Measure 1963, s 12 (4); see further PARA 623 post. Where a parish has more than one parish church by virtue of a designation under the Pastoral Measure 1968, s 27 (1), the powers, duties and liabilities of the parochial church council of the parish extend to each of the parish churches: s 27 (3) (d); see PARA 538 ante.

2 1st July 1921 was the date on which the Parochial Church Councils (Powers) Measure 1921 received the royal assent. That Measure was repealed and replaced by the Parochial Church Councils (Powers) Measure 1956, but 1st July 1921 remains the 'relevant date': s 1.

3 See PARA 568. ante.

4 See PARA 796 post.

5 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (i). Section 4 (1) is subject to the provisions of any Act or Measure passed after 1st July 1921 and to anything lawfully done under such provisions: s 4 (1). All enactments in any Act, whether general, local or personal, relating to any powers, duties or liabilities transferred to the council from the vestry, churchwardens or church trustees (see PARAS 576, 577 post) are subject to the provisions of the Parochial Church Councils (Powers) Measure 1956 and are, so far as circumstances admit, to be construed as if any reference to the vestry or the churchwardens or church trustees referred to the parochial church council, and those enactments are to be construed with such modifications as may be necessary for carrying the Measure of 1956 into effect: s 4 (2). As to voluntary church rates, see PARA 586 post.

UPDATE

575 Transferred powers and duties of vestries

NOTE 1--Where by virtue of a designation made by a pastoral scheme or otherwise a parish has more than one parish church, the powers, duties and liabilities of the parochial church council so extend: Pastoral Measure 1983 s 27(5)(d). Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

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576. Transferred powers and duties of churchwardens.

The parochial church council of every parish¹ has the like powers, duties and liabilities as, immediately before 1st July 1921², the churchwardens³ of that parish had with respect to (1) the financial affairs of the church, including the collection and administration of all money raised for church purposes and the keeping of accounts in relation to those affairs and that money⁴; (2) the care, maintenance, preservation and insurance of the fabric of the church and its goods and ornaments⁵; and (3) the care and maintenance of any churchyard (open or closed)⁶, with the like powers as, immediately before 1st July 1921, were possessed by the churchwardens to recover the cost of maintaining a closed churchyard⁷. The churchwardens' powers, duties and liabilities with respect to visitations⁸ are not affected by the transfer⁹.

1 See PARA 575 note 1 ante. See also the Pastoral Measure 1968, Sch. 3 para 12 (4), which provides that, without prejudice to any general rule of law relating to parochial church councils, the powers, duties and liabilities set out in the Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (see notes 3-5 infra), continue to apply to any church which was formerly a parish church and becomes a chapel of ease as the result of a pastoral scheme or order (as to which see PARA 856 post), and to the churchyard of any such church, except so far as the scheme or order otherwise provides.

2 See PARA 575 note 2 ante.

3 As to churchwardens, see PARA 542 et seq ante.

4 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (a): see PARA 585 post. As to the adaptation of other enactments in the light of s 4 (1), see PARA 575 note 5 ante. The churchwardens retain certain functions in respect of the alms received at Holy Communion: see PARA 556 ante, 585, 981 post.

5 Ibid s 4 (1) (ii) (b): see PARA 581 post. The churchwardens' property in the church's goods and ornaments (see PARA 553 ante) is not affected by the transfer: s 4 (1) (ii) proviso.

6 Ibid s 4 (1) (ii) (c). As to the council's responsibility in respect of closed churchyards, see the Local Government Act 1972, s 215, and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1141, 1143. See also Opinions of the Legal Board (5th Edn 1973) III/26 et seq. The powers transferred under the Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c), include the power to give a certificate under the Burial Act 1855, s 18, which was repealed by the Local Government Act 1972, s 272 (1), Sch. 30, except in its application to the City of London: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1142. Differing opinions have been held as to whether the power of assenting to the burial of non-parishioners has been transferred: see PARA 1315 post, and CREMATION AND BURIAL vol 10 (Reissue) para 1061.

7 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c).

8 See PARA 552 ante.

9 Parochial Church Councils (Powers) Measure 1956, s 4 (i) (ii) proviso.

UPDATE

576 Transferred powers and duties of churchwardens

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--1968 Measure consolidated in Pastoral Measure 1983; see Sch 3 para 12(4).

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577. Transferred powers and duties of church trustees.

The parochial church council of every parish¹ has the like powers, duties and liabilities as, immediately before 1st July 1921², were possessed by the church trustees, if any, for the parish appointed under the Compulsory Church Rate Abolition Act 1868³, under which trustees could be appointed in any parish for the purpose of accepting and holding any contributions for ecclesiastical purposes in the parish⁴.

1 See PARA 575 note 1 ante.

2 See PARA 575 note 2 ante.

3 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (iii). For exceptions as to private or local Acts, see PARA 586 note 2 post. See also PARA 575 note 5 ante.

4 See the Compulsory Church Rate Abolition Act 1868, ss 9, 10, and PARAS 586, 1067 post.

UPDATE

577 Transferred powers and duties of church trustees

TEXT AND NOTE 4--1868 Act s 9 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

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578. Parochial church council's functions in relation to church appointments.

In some places by local custom the vestry formerly had, and the parochial church council now has¹, the right of electing the incumbent². A parochial church council has certain rights of objection or consultation with regard to transfer of rights of patronage³. Where a vacancy in the benefice occurs the council may make representations to the patron and may prevent a presentation until the statutory provisions have been complied with⁴. No right of patronage may be transferred by the diocesan board of patronage without the consent of the parochial church council of the parish concerned, except where the parish becomes part of another diocese⁵. The parochial church council may in certain cases purchase the rights of patronage of benefices situate within the parish⁶. The bishop's power to postpone the filling of a vacant benefice may be exercised only after consultation with the parochial church council⁷.

The parochial church council has power jointly with the minister to appoint and dismiss the parish clerk and sexton and their assistants⁸.

1 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (i).

2 See PARA 796 post.

3 See the Benefices (Transfer of Rights of Patronage) Measure 1930, ss 2, 4, and PARA 803 post.

4 See the Benefices (Exercise of Rights of Presentation) Measure 1931, ss 2, 3, and PARA 818 post.

5 See the Benefices (Diocesan Boards of Patronage) Measure 1932, s 2 proviso, and PARA 790 post.

6 See the Benefices (Purchase of Rights of Patronage) Measure 1933, s 2, and PARA 805 post.

7 See the Pastoral Measure 1968, s 67. For this and other provisions requiring consultation, see PARA 813 post.

8 See the Parochial Church Councils (Powers) Measure 1956, s 7 (iii), and PARAS 558, 559 ante.

UPDATE

578 Parochial church council's functions in relation to church appointments

NOTE 3--Now Patronage (Benefices) Measure 1986 s 3 (PARA 802A).

NOTE 4--Now *ibid* ss 11-13 (PARAS 818A.5-7).

NOTE 5--Now *ibid* s 27(2), (3).

TEXT AND NOTE 6--Repealed: *ibid* Sch 5. A right of patronage may not be sold: s 3(1).

NOTE 7--Consolidated in Pastoral Measure 1983; see s 67; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21.

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579. Parochial church council's functions in relation to church services.

Decisions as to which of the authorised forms of service are to be used in a church in a parish must be taken jointly by the minister and the parochial church council¹, and alternative versions of the Bible may not be used in place of the portions set out in the Book of Common Prayer in any church in a parish without the agreement of the parochial church council². A minister is not permitted to change the form of vesture in use in the church or chapel in which he officiates unless he has ascertained by consultation with the parochial church council that the changes will be acceptable³.

The parochial church council must, insofar as the law may from time to time require, provide and pay for certain requisites of divine service⁴ including a font, a holy table, communion plate and linen, surplices for the minister, reading desks and pulpit, seats for the congregation, church bells, books for the conduct of services, an alms box and register books⁵.

1 See the Revised Canons Ecclesiastical, Canon B3 para 1 (substituted by Amending Canon No. 3), and PARA 938 post.

2 See the Prayer Book (Versions of the Bible) Measure 1965, s 1 (1) proviso, and PARA 945 post.

3 See the Revised Canons Ecclesiastical, Canon B8 para 6, and PARA 970 post.

4 Ibid Canon F14.

5 See ibid Canons F1-F12, and PARA 951 et seq post. See also PARA 1016 post, and PARA 1034 note 2 post.

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580. Miscellaneous functions of parochial church councils.

The parochial church council has power to make representations to the bishop with regard to any matter affecting the welfare of the church in the parish¹.

Before deciding to make by recommendations to the bishop the pastoral committee of a diocese² must ascertain the views of the parochial church council of any parish which would be affected by the implementing of any recommendations, proposals or draft scheme or order³.

In the exercise of the faculty jurisdiction, a court will generally require a supporting resolution of the parochial church council before authorising any changes affecting the church or its contents or the churchyard, but the council's resolution is not conclusive, and may for good reasons be disregarded⁴. Under the alternative procedure by archdeacon's certificate every application must be supported by a resolution of the council⁵.

In the case of an agreement for the sharing of a church building or buildings between two or more churches the parties to the agreement must, as respects the Church of England, include the parochial church council of the parish concerned⁶.

The parochial church council is entitled to receive notice of, and to object to, any proposal for the sale or pulling down of a parsonage house or for the erection or purchase of a new parsonage house⁷. It must also be given notice of any proposed application or disposition of money arising from such transactions and may make representations to the Church Commissioners with respect to them⁸.

A pastoral scheme may provide, or authorise the bishop to provide, for the election by parochial church councils of representatives to a group council⁹.

1 Parochial Church Councils (Powers) Measure 1956, s 7 (v). As to the making of representations to the archdeacon, or in some cases to the bishop, with a view to the convening of an extraordinary meeting of the council, see PARA 588 post.

2 See PARA 521 ante.

3 See the Pastoral Measure 1968, s 3 (1), (2) (c), and PARA 862 post. The council is for this purpose an 'interested party' (see s 3 (2)), and is entitled to be given an opportunity of meeting the pastoral committee or a sub-committee or one of its representatives (s. 3 (3)). At a later stage in the procedure the council is entitled to receive a copy of any draft scheme or order prepared by the Church Commissioners, and to be allowed not less than twenty-eight days for making written representations with respect to it: s 5 (1); see PARA 878 post. For the council's rights in regard to termination of provisions of a pastoral scheme for the holding of benefices in plurality, see also s 17 (2).

4 See PARA 1319 post. The council may itself be a party to the proceedings in appropriate cases: see the Faculty Jurisdiction Measure 1964, s 1, and PARA 1319 post.

5 See *ibid* s 12 (1), and PARA 1331 post.

6 Sharing of Church Buildings Act 1969, s 1 (3) (a): see PARA 1187 ante.

7 See the Parsonages Measure 1938, s 3; Church Property (Miscellaneous Provisions) Measure 1960, s 3 (2); and PARA 1162 post. As to selling or pulling down a house, see the Parsonages Measure 1938, s 1 (as amended); and as to the erection or purchase of a new house, see s 2 (as amended).

8 *Ibid* s 7: see PARA 1162 post.

9 See the Pastoral Measure 1968, Sch. 3 para 3 (4) (a), and PARA 871 post.

UPDATE

580 Miscellaneous functions of parochial church councils

TEXT--A parochial church council may give the minister general guidance with respect to the burial in the churchyard or other parish burial ground of persons not having a right of burial there: Church of England (Miscellaneous Provisions) Measure 1976 s 6(2). Burial includes disposal of cremated remains: 1976 Measure s 6(2); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 12.

If it appears to an archdeacon that (i) anything has been done in a parish in his archdeaconry which ought not to have been done without a faculty, or (ii) anything which ought to have been done in connection with the care of any church in his archdeaconry or any article appertaining to any such church has not been done, he may convene an extraordinary meeting of the parochial church council, or an extraordinary parochial church meeting, for the purpose of discussing the matter, and must either take the chair himself or appoint a chairman to preside: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 20. The chairman is not entitled to vote on any resolution before the meeting: s 20.

NOTE 3--1968 Measure s 3, as amended, consolidated in Pastoral Measure 1983 s 3(1), (2)(c), (6); see PARA 862. 1968 Measure s 5(1) now 1983 Measure s 6(1) (amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 3); 1968 Measure s 17(2) now 1983 Measure s 18(2).

NOTE 7--1938 Measure s 3 amended: Team and Group Ministries Measure 1995 s 8.

TEXT AND NOTE 9--This provision is not reproduced in the 1983 Measure.

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(B) PROPERTY AND MAINTENANCE

581. Maintenance and repair of church and churchyard.

The freehold of the church, with its fixtures, and of the churchyard is vested either in the incumbent or, in some cases, in the rector, when not the incumbent¹, but they are in the joint possession of the incumbent and the parochial church council, without whose consent no one has a right to enter them except for the purpose of some service². The council is entrusted with their care and maintenance, including the provision of necessary furniture and fittings in the church and the proper fencing of the churchyard³. It is not bound to perform the duty if it has no funds for the purpose⁴, and the duty does not extend to the chancel where it is repairable by the rector⁵, nor to a private chapel or aisle in the church⁶. The incumbent has a right to keep the key of the church, and the parochial church council is only entitled to access to the church for the discharge of its duties, and has no right to break open the door for that purpose⁷. When the rector is liable to repair the chancel⁸ the parochial church council has power to enforce the liability in the county court⁹. In the event of trespass or damage (actual or threatened) to the church or churchyard the council can institute proceedings in the appropriate court¹⁰.

1 See PARA 1079 post; *R v Hickman* (1784) 2 East PC 593.

2 *Jarratt v Steele* (1820) 3 Phillim 167; *Jones v Ellis* (1828) 2 Y & J 265 at 266, 273; *Worth v Terrington* (1845) 13 M & W 781; *Griffin v Dighton* (1864) 5 B & S 93 at 108, Ex Ch; *Cope v Barber* (1872) LR 7 CP 393 at 404n (1). As to parishioners' rights, see PARA 562 ante; as to churchwardens' rights, see PARA 553 ante.

3 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (b), (c); Revised Canons Ecclesiastical, Canon F14; see also PARA 576 ante, 1096, 1109, et seq. post. The council's powers and duties of care and maintenance extend to a right of way alleged to be appurtenant to the church and churchyard: see *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark* (No. 2) [1973] 3 All ER 902, [1973] 1 WLR 1572.

4 *Northwaite v Bennett* (1834) 2 Cr & M 316 at 317, per Bayley B; *Millar and Simes v Palmer and Killby* (1837) 1 Curt 540 at 554, 555.

5 See PARAS 1096, 1100 et seq post. The council must be consulted upon a composition by a lay rector of his liability to repair a chancel: see the Ecclesiastical Dilapidations Measure 1923, s 52 (2); Ecclesiastical Dilapidations (Amendment) Measure 1929, s 18, and PARA 1101 post.

6 See PARA 900 post.

7 *Bellars v Geast* (1741) Rothery's Precedents, no. 157, p. 77; *Lee v Matthews* (1830) 3 Hag Ecc 169 at 173; *Harrison v Forbes and Sisson* (1860) 6 Jur NS 1353; *Dewdney v Ford* (1861) 7 Jur NS 637; *Redhead v Wait* (1862) 6 LT 580; *R v O'Neill, ex parte Oliver* (1867) 31 JP Jo 742; *Ritchings v Cordingley* (1868) LR 3 A & E 113. As to churchwardens' right of access, see PARA 553 ante.

8 See PARA 1100 post.

9 Chancel Repairs Act 1932, ss 2, 3 (1), 4. For the procedure for enforcing liability, see PARA 1106 post.

10 Eg it can maintain an action in the Chancery Division of the High Court to restrain a person from pulling down the churchyard wall: *Marriot v Tarpley* (1838) 9 Sim 279.

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582. Ownership and care of movables.

The bells, bell ropes, organ and other goods, ornaments and books of the church are in the legal ownership of the churchwardens as a quasi-corporation¹, but their care is transferred to the parochial church council². The churchwardens and the council must allow the goods and ornaments to be used in connection with divine service under the direction of the incumbent³, and cannot remove any ornaments or other goods from the church or introduce any new ornaments or goods without a faculty⁴.

1 1 Bl Com (14th Edn) 394; *A-G v Rupert* (1722) 2 P Wms 125; *Jackson v Adams* (1835) 2 Bing NC 402. Private individuals may have property rights in them: see *Walker v Clyde* (1861) 10 CBNS 381. See also PARA 553 ante.

2 See PARA 576 ante.

3 *Harrison v Forbes and Sisson* (1860) 6 Jur NS 1353; *Redhead v Wait* (1862) 6 LT 580. Bells are not to be rung at any time contrary to the direction of the incumbent: Revised Canons Ecclesiastical, Canon F8 para 2; Canon F15 para 1. See also *Daunt v Crocker* (1867) LR 2 A & E 41; *Martin v Nutkin* (1724) 2 P Wms 266, where an agreement entered into as to the ringing of church bells was held enforceable by injunction by a vestry against the incumbent and succeeding churchwardens. As to church bells as nuisance, see *Soltau v De Held* (1851) 2 Sim NS 133; *Hardman v Holberton* [1866] WN 379; and NUISANCE vol 78 (2010) PARA 125.

4 *Durst v Masters* (1875) 1 PD 123 at 126, 127; on appeal (1876) 1 PD 373 at 383, PC. This restriction does not apply to slight matters, such as movable seats or hassocks: *Parham v Templar* (1821) 3 Phillim 515 at 527; see PARA 1310 post.

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583. Property.

The parochial church council¹ has power to acquire (whether by way of gift or otherwise) any property real or personal for any ecclesiastical purpose² affecting the parish or any part of it³ or for any purpose in connection with schemes (called 'educational schemes') for providing facilities for the spiritual, moral and physical training of persons residing in or near the parish⁴ with power to manage, administer and dispose of any property so acquired⁵.

A council may not acquire any interest in land, other than a short lease⁶, or in any personal property to be held on permanent trusts⁷, without the consent of the diocesan authority⁸. Where on or after 2nd January 1957⁹ a council holds or acquires any such interest in land or in personal property, the interest must be vested in the diocesan authority subject to all trusts, debts and liabilities affecting it¹⁰. Where any property is so vested in the diocesan authority the council may not sell, lease, let, exchange, charge or take any legal proceedings with respect to it without the authority's consent¹¹, and the council must keep the authority indemnified in respect of all existing and subsequent liabilities, all rates, taxes, insurance premiums and other outgoings, all costs, charges and expenses incurred by the authority in relation to the acquisition or insurance of the property or as its trustee, and all costs, proceedings, claims and demands in respect of any of the foregoing matters¹². The accounts of all trusts administered by the council must be laid before the diocesan authority annually¹³.

1 As to the special provisions applicable where the functions of the parochial church council are transferred to the administrative body of a parish church cathedral, see the Cathedrals Measure 1963, s 12 (4), (5), and PARA 623 post. The Parochial Church Council's (Powers) Measure 1956, ss 5 (1), 6, 8, do not apply where there has been such a transfer: Cathedrals Measure 1963, s 12 (4) (b).

2 'Ecclesiastical purpose', as used in this context, is not defined. For a discussion of the interpretation to be put upon it, see Opinions of the Legal Board (5th Edn 1973) II/71-73, where it is suggested that the meaning must be deduced from its context and should be narrowed or widened accordingly, but that any purpose furthering the work of the Church of England in a parish can, generally speaking, be assumed to be an 'ecclesiastical purpose' within the meaning of this provision.

3 Parochial Church Councils (Powers) Measure 1956, s 5 (1) (a).

4 Ibid s 5 (1) (b). See PARA 584 post.

5 Ibid s 5 (2); see PARA 1067 post. The powers of management, administration and disposal are subject to the provisions of the Measure (see in particular s 6 infra) and of the general law and to the provisions of any trusts affecting any such property: s 5 (2).

6 'Short lease' means a lease for a term not exceeding one year, and includes any tenancy from week to week, from month to month, from quarter to quarter, or from year to year: ibid s 6 (6).

7 Any question as to whether personal property is to be held on permanent trusts is to be determined, for the purposes of ibid s 6, by a person appointed by the bishop: s 6 (7).

8 Ibid s 6 (1). 'Diocesan authority' means the diocesan board of finance or any existing or future body appointed by the diocesan synod to act as trustee of diocesan trust property: s 1; Synodical Government Measure 1969, s 4 (7); see PARAS 517, 518 ante. For comment, see Opinions of the Legal Board (5th Edn 1973) II/71 et seq, and a memorandum of the Legal Advisory Commission (LF6) 'The Legal Relationship between a Diocesan Authority and a Parochial Church Council' (Church Information Office).

9 Ie the date of commencement of the Parochial Church Councils (Powers) Measure 1956: s 10 (2).

10 Ibid s 6 (2). All persons concerned are required to make or concur in making such transfers, if any, as are requisite for giving effect to this enactment: s 6 (2). As to the vesting of trust property in the diocesan authority, see also the Incumbents and Churchwardens (Trusts) Measure 1964, and PARA 1230 post. See also Opinions of the Legal Board (5th Edn 1973) II/75 et seq.

11 Parochial Church Councils (Powers) Measure 1956, s 6 (3). In other respects the council's powers in relation to the management, administration or disposition of the property are not affected by this enactment (s. 6 (3)), but the consents required by s 6 (3) are additional to any other consents required by law, either from the Charity Commissioners or the Secretary of State: Secretary of State for Education and Science Order 1964, S.I. 1964 No. 490, arts. 2 (1), 3 (2) (a).

12 Parochial Church Councils (Powers) Measure 1956, s 6 (4).

13 Ibid s 8 (4).

UPDATE

583 Property

NOTE 1--Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

TEXT AND NOTE 8--1956 Measure s 6(1) does not apply and is deemed never to have applied in relation to an advowson or share in an advowson: Church of England (Miscellaneous Provisions) Measure 1992 s 10(1).

TEXT AND NOTE 10--1956 Measure s 6(2) does not apply in relation to an advowson or share in an advowson; and any advowson or share in an advowson which is held by a diocesan authority, having been vested in the diocesan authority pursuant to s 6(2), must without any conveyance or other assurance, vest in the parochial church council concerned subject to all trusts affecting the council: 1992 Measure s 10(2). Where any property which is occupied by a member of the team in a team ministry is vested in the diocesan authority pursuant to the 1956 Measure s 6(2) and the council proposes to alter or dispose of the property or any part thereof, the council must (1) keep that member informed of the matters arising from the proposal; (2) afford that member an opportunity to express views thereon before taking any action to implement the proposal; and (3) have regard to those views before taking any such action: s 6(3A), added by the Team and Group Ministries Measure 1995 s 9.

TEXT AND NOTE 13--1956 Measure s 8 substituted: see PARA 585.

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584. Educational schemes.

A parochial church council¹ has power, in connection with any educational scheme², to constitute or participate in the constitution of a body of managers or trustees or a managing committee consisting either wholly or partly of persons appointed by the council, and may confer upon any such body or committee such functions in regard to the implementation of the scheme, and such functions relating to property held for the purposes of the scheme, as it thinks expedient³. These powers must be exercised subject to and in accordance with the terms of any undertaking which may have been given by the council to the Secretary of State for Education and Science or to any local authority in connection with any financial or other assistance given by the Secretary of State or the authority in relation to the scheme⁴. The council must not exercise its powers without the consent of the diocesan education committee⁵ of the diocese, and any such consent may be given upon such terms and conditions as the committee considers appropriate in all the circumstances of the case⁶.

1 See PARA 583 note 1 ante, which is applicable for purposes of this paragraph also.

2 As to educational schemes, see PARA 583 ante.

3 Parochial Church Councils (Powers) Measure 1956, s 5 (3).

4 Ibid s 5 (4); Secretary of State for Education and Science Order 1964, S.I. 1964 No. 490, arts. 2 (1), 3 (2) (a).

5 'Diocesan education committee', in this context, includes any body of persons, whether incorporated or not, for the time being having the functions of such a committee by virtue of the Diocesan Education Committees Measure 1955 (see PARA 522 ante) and any orders made under it: Parochial Church Councils (Powers) Measure 1956, s 5 (5).

6 Ibid s 5 (5).

UPDATE

584 Educational schemes

TEXT AND NOTE 5--1956 Measure s 5(5) amended: Diocesan Boards of Education Measure 1991 s 11. Diocesan education committees replaced by diocesan boards of education: 1956 Measure s 5(5) as amended. As to diocesan boards of education see PARA 522A.

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(C) FINANCE

585. Conduct of financial affairs by parochial church council.

The parochial church council is the body to which have been transferred the powers, duties and liabilities of churchwardens with respect to the financial affairs of the church, including the collection and administration of all money raised for church purposes and the keeping of accounts in relation to such affairs and money¹. It has power to frame an annual budget of money required for the maintenance of the work of the Church in the parish and otherwise, and to take such steps as it thinks necessary for the raising, collecting and allocating of such money². There is thus an implied power to borrow³. The council has power jointly with the minister to determine the objects to which all money to be given or collected in church shall be allocated, subject to the directions contained in the Book of Common Prayer as to the disposal of money given at the offertory at Holy Communion⁴. Unless raised for church purposes money collected by the incumbent at services held elsewhere than in church is within his disposal⁵.

The council must furnish to the annual parochial church meeting⁶ the council's audited accounts for the year ending on 31st December immediately preceding the meeting and an audited statement of the funds and property, if any, remaining in the council's hands at that date⁷. The council must also present to the annual meeting an annual report on the financial affairs of the parish⁸.

The accounts of all trusts administered by the council must be laid before the diocesan authority annually⁹.

1 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (a): see PARA 576 ante. See also Opinions of the Legal Board (5th Edn 1973) II/69, 70.

2 Parochial Church Councils (Powers) Measure 1956, s 7 (i). A diocesan synod may by scheme provide for the payment by parochial church councils of annual contributions towards the estimated expenditure of the diocesan parsonages board (Repair of Benefice Buildings Measure 1972, s 19 (2) (a)), or for the direct payment by councils of the whole or part of the cost of repairs to the parsonage houses of their own parishes (s. 19 (2) (b)), or for a combination of such contributions and direct payments (s. 19 (2) (c)). See further PARA 1178 post. As to the board, see PARA 520 ante.

3 This implied power was recognised in *Re St Peter, Roydon* [1969] 2 All ER 1233, [1969] 1 WLR 1849; but the view was expressed that the council has no power to give security for a loan (see *Re St Peter, Roydon* supra, at 1237, 1238, and at 1855, 1856).

4 Parochial Church Councils (Powers) Measure 1956, s 7 (iv); and see Opinions of the Legal Board (5th Edn 1973) II/84. In default of agreement, the matter is to be dealt with or determined in such manner as the bishop may direct: Parochial Church Councils (Powers) Measure 1956, s 9 (3). The provisions of ss 7 (iv), 9 (3), do not apply where the functions of the council have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4) (b). As to the offertory, see PARA 981 post.

5 *Marson v Unmack* [1923] P 163. Alms collected at the offertory in a chapel in the parish have been held to be in the disposal of the incumbent and churchwardens of the parish church: see *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 56; *Dowdall v Hewitt* (1864) 10 LT 823.

6 See PARA 563 et seq ante.

7 Parochial Church Councils (Powers) Measure 1956, s 8 (1). As to the appointment of auditors, see PARA 564 ante. Copies of the audited accounts and statement must be affixed at or near the principal door of the parish church at least seven days before the annual meeting: s 8 (2); Church Representation Rules, r 8 (1) (d), (e), (2),

contained in the Synodical Government Measure 1969, Sch. 3, which replaced the Rules for the Representation of the Laity. If they are approved by the meeting, they must be signed by the chairman of the meeting and delivered to the council for publication in the prescribed manner: Parochial Church Councils (Powers) Measure 1956, s 8 (3); Church Representation Rules, r 8 (3); see PARA 564 ante. The provisions of s 8 of the Measure of 1956 do not apply where the functions of the council have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4), (6).

8 Church Representation Rules, r 8 (1) (c).

9 Parochial Church Councils (Powers) Measure 1956, s 8 (4): see PARA 583 ante, and see note 7 supra.

UPDATE

585 Conduct of financial affairs by parochial church council

NOTES--Rule 8 now r 9; SI 1994/3118.

TEXT AND NOTE 4--Power to determine objects to which money should be allocated no longer subject to directions contained in Book of Common Prayer as to disposal of such money: 1956 Measure s 7(iv); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 13.

TEXT AND NOTES 6-9--Replaced.

Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

Each council must furnish to the annual parochial church meeting for discussion the financial statements of the council for the financial year immediately preceding the meeting: 1956 Measure s 8(1) (s 8 substituted by Church of England (Miscellaneous Provisions) Measure 2005 s 4). The financial year is such period as may be prescribed and the financial statements must be prepared in the prescribed form, audited or independently examined as prescribed and published and displayed in the prescribed manner: 1956 Measure s 8(2). 'Prescribed' means prescribed by the Church Representation Rules or by regulations made under the Church Representation Rules: 1956 Measure s 8(3).

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586. Church rates.

The parochial church council¹ may make, levy and collect a voluntary church rate for any purpose connected with the affairs of the church, including the council's administrative expenses and the costs of any legal proceedings². A church rate cannot be recovered by legal process³ except (1) where in pursuance of an Act of Parliament a rate may be made and levied which is applicable partly to ecclesiastical purposes⁴ and partly to other purposes, in which event the rate may be made, levied and applied for such other purposes as a separate rate, and not a church rate⁵; (2) where under the provisions of an Act a sum of money was on 31st July 1868 and is due on the security of church rates or rates in the nature of church rates⁶, or any money in the name of church rates was ordered to be raised and has not been raised, in which event a church rate may be enforced pursuant to those provisions for the purpose of paying the money so due or ordered to be paid, and the costs incidental thereto⁷; or (3) where under the authority of any private or local Act a church rate⁸ may be made or levied in lieu of or in consideration of the extinguishment or appropriation to other purposes of any tithes, customary payments or other property or charge upon property appropriated by law⁹ to ecclesiastical purposes, or where under such Act a church rate may be made or levied in consideration of the abolition of tithes, or other good consideration, or upon any contract¹⁰, in which event such Act remains in force¹¹.

A church rate is apparently to be assessed on the inhabitants of the parish¹² or district who are members of the Church of England in proportion to the rateable value of their property¹³. Any person who fails to pay a church rate is precluded from exercising any right in respect of the expenditure of the rate, and when an occupier fails to pay the owner may pay and become entitled to stand in the occupier's place¹⁴. All bodies corporate, trustees, guardians and committees¹⁵ who, or whose beneficiaries, are occupiers of property may pay any church rate made in respect of that property, and this payment is allowed to them in accounts rendered by them¹⁶. Where in pursuance of any Act a mixed fund arising partly from church rates and partly from other sources is directed to be applied to purposes of which some are ecclesiastical purposes, the portion of the fund which is derived from those sources is primarily applicable to the purposes which are ecclesiastical¹⁷.

1 The power to levy voluntary church rates belonged to vestries from 1868 (when compulsory church rates were abolished by the Compulsory Church Rate Abolition Act 1868) until the coming into operation of the Parochial Church Council (Powers) Measure 1921 (repealed), by which it was transferred to parochial church councils (see now the Parochial Church Councils (Powers) Measure 1956, and PARA 575 ante). By a separate provision of that Measure the councils were authorised to exercise the power for the purposes there specified: see s 7 (ii), and the text to note 2 infra.

2 Ibid s 7 (ii). The Measure does not affect any enactment in any private or local Act under the authority of which church rates may be made or levied in lieu of or in consideration of the extinguishment, or of the appropriation to any other purpose, of any tithes, customary payments or other property or charge upon property, which tithes, payments, property or charge previously to the passing of such Act had been appropriated by law to ecclesiastical purposes (as to which see note 4 infra), or in consideration of the abolition of tithes in any place or upon any contract made or for good or valuable consideration given, and every such enactment continues in force as if the Measure had not been passed: s 4 (4).

3 Compulsory Church Rate Abolition Act 1868, s 1.

4 'Ecclesiastical purposes' means the building, rebuilding, enlargement and repair of any church or chapel, and any purpose to which by common or ecclesiastical law a church rate is applicable, or any of such purposes:

ibid s 10. See also the Parochial Church Councils (Powers) Measure 1956, s 4 (4), where 'ecclesiastical purposes' is defined, for the purposes of that Measure, in the same way but with the omission of the words 'or chapel'.

5 Compulsory Church Rate Abolition Act 1868, s 2. If it is made in part for ecclesiastical and in part for other purposes it may be good as to the latter part and bad as to the rest: *Watson v All Saints, Poplar, Vestry* (1882) 46 LT 201.

6 'Church rate' means a rate for ecclesiastical purposes as defined in note 4 supra: Compulsory Church Rate Abolition Act 1868, s 10.

7 Ibid s 3.

8 The words 'church rate' here must be read in the sense in which the expression is used in the private or local Act, and the definition contained in note 4 supra, does not apply: *LCC v Churchwardens of St Botolph, Bishopsgate* [1914] 2 KB 660, CA.

9 See *R v Churchwardens of St Matthew, Bethnal Green* (1883) 50 LT 65, CA; affd. sub nom. *St Matthew, Bethnal Green, Vestry v Perkins* (1885) 53 LT 634, HL.

10 See *Bell v Basset* (1882) 52 LJ QB 22.

11 Compulsory Church Rate Abolition Act 1868, s 5, explained in *LCC v Churchwardens of St Botolph, Bishopsgate* [1914] 2 KB 660, CA; and see *R v Churchwardens of St Matthew, Bethnal Green* (1883) 50 LT 65, CA; affd. sub nom. *St Matthew, Bethnal Green, Vestry v Perkins* (1885) 53 LT 634, HL. See also note 2 supra. The contract made or the consideration given must be found in or gathered from the Act which authorises the levy: *R v St Marylebone Vestry* [1895] 1 QB 771, CA.

12 For the meaning of 'parish', see PARA 534 ante.

13 See eg *Gosling v Veley* (1853) 4 HL Cas 679. It seems, however, that in practice the power to levy a voluntary church rate is seldom, if ever, exercised. See Phillimore, *Ecclesiastical Law* (2nd Edn) 1446, where it is stated that the Compulsory Church Rate Abolition Act 1868 had provided in rather an obscure manner for a voluntary church rate, clothed with some of the characteristics of the old law, but had been found generally inapplicable.

14 Ibid s 8.

15 This provision no longer has effect in relation to the persons within the jurisdiction under the Mental Health Act 1959, s 121, Sch. 5.

16 Compulsory Church Rate Abolition Act 1868, s 7.

17 Ibid s 2.

UPDATE

586 Church rates

NOTE 15--Now Mental Health Act 1983 s 11B, Sch 3.

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(D) MEETINGS AND PROCEEDINGS

587. General.

The meetings and proceedings of parochial church councils are governed by provisions¹ which apply to all councils except insofar as they may be varied by any council with the consent of the diocesan synod². Any question arising on the interpretation of these provisions must be referred to the bishop, and any decision given by him or by any person appointed by him on his behalf is final³.

No proceedings are invalidated by any vacancy in the membership of the council or by any defect in the qualification or election of any member⁴.

1 See the Church Representation Rules, r 13, App. II, contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 13 proviso.

3 Ibid App. II para 17.

4 Ibid r 43 (3), App. II para 16.

UPDATE

587 General

NOTES 1, 2--Rule 13 now r 15; SI 1994/3118.

NOTES 3, 4--App II paras 16, 17 now paras 17, 18; SI 1995/3243.

NOTE 4--Rule 43 now r 53; SI 1994/3118.

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588. Meetings of the parochial church council.

A parochial church council must hold at least four meetings a year¹. Meetings² must be convened by the chairman³ and if not more than four meetings are held they must be at quarterly intervals as far as possible⁴. The chairman may convene a meeting at any time, and if he refuses or neglects to do so within seven days after a requisition signed by at least one-third of the members of the council has been presented to him those members may forthwith convene a meeting⁵.

On a written representation made to the archdeacon by not less than one-third of the lay⁶ members of the council, or by one-tenth of the persons whose names are on the church electoral roll⁷ of the parish, and deemed by the archdeacon to have been made with sufficient cause, the archdeacon must convene an extraordinary meeting of the council⁸.

Notice of any meeting (other than an emergency meeting⁹) must be posted at or near the principal door of every church or building licensed for public worship in the parish at least ten clear days before the meeting¹⁰. Not less than seven days before the meeting a notice containing the agenda of the meeting, including any motion or other business proposed by any member of the council of which notice has been received by the secretary, must be sent to every member of the council¹¹. In the case of sudden emergency or other special circumstances requiring immediate action by the council, a meeting may be convened by the chairman of the council at not less than three clear days notice in writing to the members of the council¹².

1 Church Representation Rules, r 13, App. II para 2, contained in the Synodical Government Measure 1969, Sch. 3. As to variation of the provisions in the Church Representation Rules, App. II, and their interpretation, see PARA 587 ante.

2 As to emergency and extraordinary meetings, see *infra*.

3 I.e. the chairman of the council: see PARA 571 ante. As to chairmanship of meetings, see *infra*.

4 Church Representation Rules, App. II para 2.

5 *Ibid* App. II para 3.

6 For the meaning of 'lay', see PARA 591 note 5 post.

7 As to the church electoral roll, see PARA 591 et seq post.

8 Church Representation Rules, r 18 (2). The archdeacon must either take the chair himself or appoint a chairman to preside; the chairman, not being otherwise entitled to attend such a meeting, is not entitled to vote upon any resolution: r 18 (2). Where the archdeacon is himself the minister of the parish, any representation under r 18 (2) must be made to the bishop and references in the rule to the archdeacon must be construed as references to the bishop or to a person appointed by him to act on his behalf: r 18 (3).

9 See note 12 *infra*.

10 Church Representation Rules, App. II para 4 (a). The notice must specify the time and place of the intended meeting, and must be signed by or on behalf of the chairman of the council or the persons convening the meeting (para 4 (a)), which must be held at such place as the council may direct or in the absence of such direction, as the chairman may direct (para 9). As to adjournments, see PARA 589 post.

11 *Ibid* App. II para 4 (b). The notice must specify the time and place of the meeting and must be signed by or on behalf of the secretary: para 4 (b).

12 Ibid App. II para 8 (amended by S.I. 1973 No. 1865). As to the quorum and limitation of business at such a meeting, see PARA 589 post. As to the standing committee's power to transact business between council meetings, see App. II para 14 (b), and PARA 572 ante.

UPDATE

588 Meetings of the parochial church council

NOTE 8--Now r 23(1), (2); SI 1989/2094, SI 1994/3118.

TEXT AND NOTE 10--If for some good and sufficient reason the chairman, vice-chairman and secretary, or any two of them, consider that a convened meeting should be postponed, notice must be given to every member of the council specifying a reconvened time and place within fourteen days of the postponed meeting: App II para 4(c); SI 1984/1039.

TEXT AND NOTE 11--The notice must be posted or delivered to every member of the council: App II para 4(b) (amended by SI 1989/2094, SI 2004/1889).

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589. Conduct of proceedings.

The chair at a meeting of the parochial church council must normally be taken by the chairman of the council or, if he is not present or his office is vacant, by the vice-chairman¹, but if the chairman or vice-chairman thinks it expedient or the meeting so resolves, he is to vacate the chair either generally or for the purposes of any business in which he has personal interest or for any other particular business². If neither of those persons is available to take the chair for any meeting or for any particular item on the agenda, a chairman must be chosen by those members present from among their number and the person so chosen is to preside for that meeting or for that particular item³. The quorum for the transaction of business at any meeting is one-third of the members and no business which is not specified on the agenda may be transacted except by consent of three-quarters of the members present⁴. In the case, however, of an emergency meeting⁵ the quorum is a majority of the then existing members of the council and no business may be transacted except that specified in the notice convening the meeting⁶. The business of the council must be decided by a majority of the members present and voting⁷.

The minutes of the meeting must record the names of the members present⁸ and, if one-fifth of those present and voting on any resolution so require, the names of the members voting for and against that resolution⁹. Any member is entitled to require that the manner in which his vote was cast be recorded¹⁰.

A meeting may adjourn its proceedings to such time and place as may be determined at that meeting¹¹.

Any act of the council may be signified by an instrument executed pursuant to a resolution of the council and under the hands or (if an instrument under seal is required) under the hands and seals of the chairman presiding and two other members of the council present at the meeting at which such resolution is passed¹².

1 Church Representation Rules, r 13, App. II para 5, contained in the Synodical Government Measure 1969, Sch. 3. As to the chairman and vice-chairman of the council, see PARA 571 ante; as to the chairmanship at an extraordinary meeting, see PARA 588 note 8 ante.

Where a pastoral scheme (as to which see PARA 856 et seq post) establishes a team ministry the scheme, or the bishop's licence of any vicar in that ministry, may assign to that team vicar the duties or a share in the duties of the chairmanship of the parochial church council (and the annual parochial church meeting) of any parish in the area of the benefice for which the team ministry is established, and the Church Representation Rules have effect accordingly: Pastoral Measure 1968, Sch. 3 para 3 (1). If the duties of chairmanship are to be shared the arrangements must be such that the chairman on any occasion is determined in advance so that, in his absence, the vice-chairman of the parochial church council can take the chair in accordance with the ordinary rules: Sch. 3 para 3 (1) proviso.

2 Church Representation Rules, App. II para 5 proviso.

3 Ibid App. II para 5.

4 Ibid App. II para 6. The order of business is that set forth in the agenda unless the council by resolution otherwise determines: App. II para 7.

5 See PARA 588 ante.

6 Church Representation Rules, App. II para 8 (amended by S.I. 1973 No. 1865).

7 Ibid App. II para 10. If the votes are equal the chairman has a second or casting vote: App. II para 11.

8 Ibid App. II para 12 (a).

9 Ibid App. II para 12 (b).

10 Ibid App. II para 12 (c). Council members have access to the minutes of all meetings, but no other person, other than the bishop or a person authorised by him in writing, or the archdeacon may have access to the minutes without the council's authority: App. II para 12 (d).

11 Ibid App. II para 13.

12 Parochial Church Councils (Powers) Measure 1956, s 3. This does not, however, apply where the council's functions have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4) (b). For the status of the council as a body corporate, see PARA 569 ante.

UPDATE

589 Conduct of proceedings

TEXT AND NOTE 1--Replaced. The chair must be taken (1) by the chairman of the council if he is present; (2) if the chairman is not present, by the clerk in Holy Orders, licensed to or with permission to officiate in the parish duly authorised by the bishop with the clerk's agreement, following a joint application by the minister of the parish and the council or, if the benefice is vacant, by the council for this purpose; and (3) if neither the chairman of the council nor the clerk mentioned in head (2) is present, by the vice-chairman of the council: Church Representation Rules App II para 5(a)-(c); Synodical Government (Amendment) Measure 2003 Schedule para 9(a).

1968 Measure consolidated in Pastoral Measure 1983; see Sch 3 para 4(1).

TEXT AND NOTE 2--Now if the chairman presiding thinks it expedient: Church Representation Rules App II para 5 proviso; SI 1981/959.

TEXT AND NOTE 3--This now applies if none of the persons mentioned in TEXT AND NOTE 1 is available: Church Representation Rules App II para 5 (amended by the Synodical Government (Amendment) Measure 2003 Schedule para 9(b), SI 1981/959, and SI 2009/2129).

NOTE 10--Now minutes of meetings of the council must be available to all members of the council: App II para 12(d); SI 1994/3118. The members must also have access to past minutes which the chairman and vice-chairman jointly determine to be relevant to current council business: App II para 12(d). The independent examiner or auditor of the council's financial statements, the bishop, the archdeacon and any person authorised by one of them in writing must have access to the approved minutes of council meetings without the authority of the council: App II para 12(e); SI 1995/3243. For the meaning of 'auditor' and 'independent examiner', see PARA 564. Other persons whose names are on the church electoral roll may have access to the approved minutes of council meetings held after the annual parochial church meeting in 1995 except any minutes deemed by the council to be confidential: App II para 12(f); SI 1994/3118. Other persons may have access to the minutes of council meetings only in accordance with a specific authorisation of the council provided that, where minutes have been deposited in the diocesan record office pursuant to the Parochial Registers and Records Measure 1978 (see PARA 1112 et seq), the authorisation of the council may be dispensed with: App II para 12(g); SI 1994/3118.

NOTE 12--Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

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590. Bishop's powers.

The bishop¹ may make rules for carrying the Parochial Church Councils (Powers) Measure 1956 into effect within the diocese². If any act required by the Measure to be done by any person is not done within such time as the bishop may consider reasonable, it may be done by or under the authority of the bishop³. In the event of a council and a minister being unable to agree as to any matter in which their agreement or joint action is required under the provisions of the Measure, the matter must be dealt with or determined in such manner as the bishop may direct⁴. In the case of an omission in any parish to form or maintain a parochial church council, the rural dean, upon the omission being brought to his notice, must ascertain and report its cause to the bishop⁵.

1 During a vacancy in a diocesan see the bishop's powers mentioned in this paragraph may be exercised by the guardian of the spiritualities: Parochial Church Councils (Powers) Measure 1956, s 9 (4); see PARA 489 ante, and cf. the Church Representation Rules, r 43 (1), (2), contained in the Synodical Government Measure 1969, Sch. 3, and PARA 389 ante. The Parochial Church Councils (Powers) Measure 1956, s 9, does not apply where the functions of the council have been transferred to the administrative body of a parish church cathedral: Cathedrals Measure 1963, s 12 (4) (b).

2 Parochial Church Councils (Powers) Measure 1956, s 9 (1). The power is exercisable subject to the provisions of the Measure: s 9 (1).

3 Ibid s 9 (2).

4 Ibid s 9 (3).

5 Church Representation Rules, r 43 (5).

UPDATE

590 Bishop's powers

NOTES--Rule 43 now r 53; SI 1994/3118.

NOTE 1--Cathedrals Measure 1963 s 12 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(10) THE CHURCH ELECTORAL ROLL/591. Formation of church electoral roll.

(10) THE CHURCH ELECTORAL ROLL

591. Formation of church electoral roll.

There must be a church electoral roll¹ in every parish². The roll is the basis of the system for the representation of the laity in the parochial church councils and the synods of the Church of England³. The persons entitled to have their names⁴ entered on the roll of a parish are lay persons⁵ of either sex, of seventeen years or upwards⁶, who are baptised⁷ and are members of the Church of England or of a church in communion with it⁸, who are resident⁹ in the parish or, if not so resident, have habitually attended¹⁰ public worship¹¹ in the parish during a period of six months prior to enrolment¹², and who have signed the prescribed form of application for enrolment¹³. A person is entitled to have his name on the roll of each of any number of parishes if he is qualified as above to have his name entered on each roll¹⁴.

Until a parochial church council has been constituted in a parish the roll must be formed and revised by the minister and churchwardens, if any, and thereafter it must be kept and revised by or under the direction of the council¹⁵, which must appoint a church electoral roll officer to act under its direction for the purpose of carrying out its functions with regard to the roll¹⁶, and he is to have charge of the roll¹⁷.

1 The provisions governing the church electoral roll are contained in the Church Representation Rules (see PARA 389 ante), contained in the Synodical Government Measure 1969, Sch. 3.

2 Church Representation Rules, r 1 (1). The roll is available for inspection by bona fide inquirers: r 1 (1). Where a new parish is created by a pastoral scheme the incumbent must as soon as possible take all necessary steps to form a church electoral roll: Pastoral Measure 1968, Sch. 3 para 12 (1) (a). In the case of an omission in any parish to prepare or maintain a roll, the rural dean, upon the omission being brought to his notice, must ascertain the cause and report it to the bishop: Church Representation Rules, r 43 (5). As to the bishop's powers, see PARA 389 ante. For the meaning of 'parish', see PARA 534 ante.

3 Entry on the electoral roll of a parish is a necessary qualification for the participation of a lay person in parochial church meetings (see PARA 563 ante) and for election, as a representative of the laity, to the parochial church council (see PARA 569 ante), the deanery synod (see PARA 528 ante), the diocesan synod (see PARA 510 ante) and the House of Laity of the General Synod (see PARA 420 ante). If a person ceases to have that qualification his seat on the deanery synod, diocesan synod or General Synod (as the case may be) will normally be vacated forthwith (see PARAS 531, 507, 423 ante, respectively).

4 Addresses must also be recorded where practicable, although the omission of a person's address does not prejudice the validity of any entry on the roll: Church Representation Rules, r 1 (9).

5 Ibid r 1 (1). References in the Church Representation Rules to the laity must be construed as references to persons other than clerks in holy orders, and 'lay' must be constructed accordingly: r 44 (2).

6 Ibid r 1 (2) (c).

7 Ibid r 1 (2) (a).

8 Ibid r 1 (2) (b) (substituted by S.I. 1973 No. 1865). As to membership of the Church of England see PARA 346 ante. According to a note annexed to the form of application for enrolment (see note 13 infra), the only churches at present in communion with the Church of England are other Anglican Churches (see PARA 313 ante) and certain foreign churches. As to the determination of questions whether a church is in communion with the Church of England, see r 44 (4) (amended by S.I. 1973 No. 1865), and PARA 432 ante.

9 The residence must be of a regular, not casual, nature: ibid r 44 (5). For discussion of some borderline cases, see Opinions of the Legal Board (5th Edn 1973) l/53, 54.

10 'Habitual attendance' is not defined, but it would not appear to exclude the possibility of frequent attendance elsewhere. Relaxation of the requirement is allowed in the case of the re-enrolment of a person who was on the previous roll as a habitual worshipper but has been prevented by sickness or absence or other essential reason from worshipping for the past six months: Church Representation Rules, r 2 (6), App. I, s 1 note 2 (substituted by S.I. 1973 No. 1865); see PARA 594 post.

11 For the meaning of 'public worship', see PARA 545 note 8 ante.

12 Church Representation Rules, r 1 (2) (d).

13 Ibid r 1 (2) (e). For the prescribed form, see App. I, s 1 (substituted by S.I. 1973 No. 1865).

14 Ibid r 1 (3) (substituted by S.I. 1973 No. 1865). A person name is entered on the roll of each of two or more parishes must, however, choose one of these parishes for the purpose of rules prescribing the qualifications for election to a deanery synod (see PARA 528 ante), a diocesan synod (see PARA 510 ante) or the General Synod (see PARA 420 ante) or for membership of a deanery synod under r 19 (3) (b) (see PARA 528 ante): r 1 (3) (substituted by S.I. 1973 No. 1865).

15 Ibid r 1 (4). As to the constitution of parochial church councils, see PARA 569 ante.

16 Ibid r 1 (5) (amended by S.I. 1973 No. 1865). If a council has not been constituted the necessary action must be taken by the minister and churchwardens, if any: r 1 (4). Further as to the electoral roll officer, see PARA 571 ante.

17 Ibid App. II para 1 (f).

UPDATE

591 Formation of church electoral roll

NOTE 2--Pastoral Measure 1983 does not make this provision. See now Church Representation Rules r 1(6); SI 1981/959, SI 1994/3118, as follows: where a new parish is created by a pastoral scheme, the roll of that parish in the first instance consists (a) in the case of a parish created by the union of two or more former parishes, of the rolls of those parishes combined to form one roll; (b) in any other case, of the names of the persons whose names are at the date of the coming into existence of the new parish entered on the roll of a parish the whole or any part of which forms part of the new parish and who are either resident in the new parish or have habitually attended public worship therein.

Rule 43 now r 53; SI 1994/3118.

TEXT AND NOTES 4-13--Now a lay person is entitled to have his name entered on the roll of a parish if he is baptised, of 16 years or upwards, has signed an application form for enrolment and declares himself either (a) to be a member of the Church of England or of a church in communion therewith resident in the parish, or (b) to be such a member and, not being resident in the parish, to have habitually attended public worship in the parish during a period of six months prior to enrolment, or (c) to be a member in good standing of a church which subscribes to the doctrine of the Holy Trinity (not being a church in communion with the Church of England) and also prepared to declare himself to be a member of the Church of England having habitually attended public worship in the parish during a period of six months prior to enrolment: r 1(2); SI 1994/3118. For the prescribed form, see App 1 s 1; SI 1994/3118. Where a lay person will have his sixteenth birthday after the intended revision of the electoral roll or the preparation of a new roll but on or before the date of the annual parochial church meeting, he may complete a form of application for enrolment and his name must be enrolled, but with effect from the date of his birthday: r 1(2) proviso; SI 1994/3118. Where a person resides in an extra-parochial place, he is deemed for the purposes of these provisions to reside in the parish which it abuts, and if there is any doubt in the matter a

determination must be made by the bishop's council and standing committee: r 1(3); SI 1994/3118.

NOTE 4--Rule 1(9) now r 1(10); SI 1994/3118.

NOTE 5--Where a person has executed a deed of relinquishment under the Clerical Disabilities Act 1870 (see PARA 686), and the deed has been enrolled in the High Court and recorded in the registry of a diocese under that Act, then, unless and until the vacation of the enrolment of the deed is recorded in such a registry under the Clerical Disabilities Act 1870 (Amendment) Measure 1934, that person is deemed not to be a clerk in holy orders for the purpose of r 54(2) or of any other provision of the Church Representation Rules which refers to such a clerk: r 54(3); SI 1980/178, SI 1994/3118.

NOTE 8--Rule 44(4) now r 54(5); SI 1980/178, SI 1994/3118.

NOTE 9--Rule 44(5) now r 54(6); SI 1980/178, SI 1994/3118.

NOTE 10--Rule 2(6) App I s 1, NOTE 2 now NOTE 3; SI 1994/3118. Membership of the electoral roll is also open to members in good standing of a church not in communion with the Church of England which subscribes to the doctrine of the Holy Trinity where those members are also prepared to declare themselves to be members of the Church of England: NOTE 2; SI 1994/3118.

NOTES 14-16--Rule 1(3)-(5) now r 1(4)-(7); SI 1994/3118; 1995/3243.

Church Representation Rules, r 2 (6), App. I, s 1 note 2

NOTE 14--Now also for the purpose of rules prescribing the qualifications for membership of a parochial church council under r 12(1)(e) (see PARA 569): r 1(4); SI 1980/178, SI 1994/3118; SI 1995/3243.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(10) THE CHURCH ELECTORAL ROLL/592. Addition and removal of names.

592. Addition and removal of names.

The names of persons entitled to have their names entered on the church electoral roll must, subject to the relevant provisions, be from time to time added to the roll¹. No name may be added to or removed from the roll except by the authority of the parochial church council, and it is the council's duty to keep the roll constantly up to date and to cause names to be added and removed as from time to time required by the Church Representation Rules¹.

Subject to the foregoing, a person's name must, as the occasion arises, be removed from the roll if he has died², or has become a clerk in holy orders³, or has signified in writing his desire that his name should be removed⁴, or has ceased to reside in the parish (unless he continues habitually to attend public worship in the parish)⁵, or is not resident and has not attended public worship in the parish during the preceding six months (not having been prevented from doing so by illness or other sufficient cause)⁶, or was not entitled to have his name entered on the roll at the time when it was entered⁷. The removal of a person's name from the roll is without prejudice to his right to have it entered again if he has or acquires that right⁸.

Provision is made whereby, upon the alteration of the boundaries of parishes, name may be transferred from the roll of one parish to that of the other parish⁹.

1 Church Representation Rules, r 1 (6), contained in the Synodical Government Measure 1969, Sch. 3. If a council has not been constituted these functions are to be performed by the minister and churchwardens: see the Church Representation Rules, r 1 (4), and PARA 591 ante. As to periods when names may not be entered on the roll, see PARAS 593, 594 post. When a person applying for enrolment in any parish signifies his desire that his name should be removed from the roll of any other parish, notice of the fact must be sent by the enrolling council to the council of the other parish: r 3 (1).

2 Ibid r 1 (7) (a).

3 Ibid r 1 (7) (b).

4 Ibid r 1 (7) (c).

5 Ibid r 1 (7) (d) (amended by S.I. 1973 No. 1865). When a person's name is removed because he has become resident in another parish notice of the fact should, whenever possible, be sent by the removing council to the council of the other parish: r 3 (2).

6 Ibid r 1 (7) (e) (amended by S.I. 1973 No. 1865).

7 Ibid r 1 (7) (f) (amended by S.I. 1973 No. 1865).

8 Ibid r 1 (8) (amended by S.I. 1973 No. 1865).

9 See ibid r 2 (8). The council of the parish from which the area is transferred must first ask the persons concerned whether they wish to have their names transferred, and if they answer affirmatively it must remove the names and inform the council of the parish in which those persons now reside, which must enroll their names without fresh application: r 2 (8).

UPDATE

592 Addition and removal of names

NOTES 1-8--Rule 1(6)-(8) now r 1(8)-(10); SI 1994/3118.

TEXT AND NOTE 1--Second sentence of TEXT is now as follows: It is the duty of the electoral roll officer to keep the roll constantly up to date by the addition and removal of names as from time to time required by the Church Representation Rules and to report such additions and removals at the next meeting of the parochial church council: r 1(8); SI 1994/3118.

TEXT AND NOTE 5--Now if he has ceased to reside in the parish unless after so ceasing he continues, in any period of six months, habitually to attend public worship in the parish, unless prevented from doing so by illness or other sufficient cause: r 1(9)(d); SI 1984/1039, SI 1994/3118.

TEXT AND NOTE 6--Now a person's name must be removed from the register if he has not *habitually* attended public worship in the parish during the preceding six months, subject to the same proviso: r 1(9)(d); SI 1994/3118.

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593. Revision of the roll.

Except in a year in which a new roll is prepared¹, the church electoral roll of a parish must be revised annually, after due notice has been given², by or under the direction of the parochial church council³. The revision must be completed not less than fifteen days or more than twenty-eight days before the annual parochial church meeting⁴. Upon every revision all enrolments or removals from the roll which have been effected since the date of the last revision (or since the formation of the roll, if there has been no previous revision) must be reviewed, and such further enrolments or removals as may be required must be effected⁵. After the completion of the revision a copy of the roll as revised, together with a list of the names removed since the last revision (or since the formation of the roll, if there has been no previous revision), must be published in the prescribed manner⁶. No name may be entered upon or removed from the roll during the period in any year between the completion of the revision and the close of the annual parochial church meeting⁷.

1 See PARA 594 post.

2 Notice of the intended revision in the prescribed form must be affixed by the minister or under his direction on or near the principal door of every church in the parish and every building there licensed for public worship, and remain so affixed for a period of not less than fourteen days before the commencement of the revision: Church Representation Rules, r 2 (1), contained in the Synodical Government Measure 1969, Sch. 3. For the prescribed form, see the Church Representation Rules, App. I, s 2 (amended by S.I. 1973 No. 1865).

3 Ibid r 2 (1).

4 Ibid r 2 (1). As to the annual parochial church meeting, see PARA 563 ante.

5 Ibid r 2 (2).

6 Ibid r 2 (3). It must be exhibited continuously for not less than fourteen days before the annual meeting on or near the principal door of the parish church in such manner as the council shall appoint: r 2 (3).

7 Ibid r 2 (3).

UPDATE

593 Revision of the roll

NOTE 2--Appendix I s 2 further amended: SI 1980/178, SI 1984/1039, SI 1989/2094, SI 1994/3118.

TEXT AND NOTE 7--Now during the period while the copy is exhibited any errors and omissions in the roll may be corrected, but subject to this and the provisions of r 1(2) (see PARA 591), no names must be added to or removed from the roll during the period in any year between the completion of the revision and the close of the annual parochial church meeting: r 2(3); SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(10) THE CHURCH ELECTORAL ROLL/594. Preparation of new roll.

594. Preparation of new roll.

In the year 1978 and every succeeding sixth year a new church electoral roll must be prepared¹. Public notice must be given in the prescribed manner², and the parochial church council must take reasonable steps to inform every person whose name is on the previous roll that if he wishes to have his name entered on the new roll he must apply for enrolment³. The preparation of the new roll must be completed not less than fifteen days or more than twenty-eight days before the annual parochial church meeting⁴; and a copy must be published in the prescribed manner⁵. No names may be entered on or removed from the roll during the period in any year between the completion of the new roll and the close of the annual parochial church meeting⁶. On the publication of the new roll, the previous roll ceases to have effect⁶.

1 Church Representation Rules, r 2 (4), contained in the Synodical Government Measure 1969, Sch. 3.

2 Not less than two months before the annual parochial church meeting (see PARA 563 ante) notice in the form set out in *ibid* App. I, s 3 (amended by S.I. 1973 No. 1865), must be affixed as described in PARA 593 note 2 ante: r 2 (4). In addition, at every service on the two Sundays during the fourteen days the notice is so affixed (or, in the case of a church at which no service is held on either of those Sundays, at every service on the first Sunday after the affixing of the notice) the congregation must be informed of the preparation of the new roll: r 2 (4) (amended by S.I. 1973 No. 1865).

3 *Ibid* r 2 (5) (substituted by S.I. 1973 No. 1865). No such steps need be taken, however, in the case of a person whose name could be removed from the previous roll under r 1 (7) (see PARA 592 ante): r 2 (5) (substituted by S.I. 1973 No. 1865). The new roll must be prepared by entering on it the names of persons entitled to entry under r 1 (2) (see PARA 591 ante), a fresh application being required from each person who was on the previous roll, but no such person is disqualified for entry on the new roll by reason only of his not having attended public worship in the parish during the preceding six months if he was prevented from so doing by illness or other sufficient cause, in which case the circumstances must be stated on the application form: r 2 (6).

4 *Ibid* r 2 (6).

5 *Ibid* r 2 (7). It must be exhibited as described in PARA 593 note 6 ante: r 2 (7).

6 *Ibid* r 2 (7).

UPDATE

594 Preparation of new roll

TEXT AND NOTE 1--Now in the year 2007 and every succeeding sixth year: Church Representation Rules r 2(4) (amended by SI 2004/1889).

NOTE 2--Appendix I s 3 further amended: SI 1980/178, SI 1984/1039, SI 1989/2094, SI 1994/3118.

TEXT AND NOTE 6--The first sentence of the TEXT now provides that during the period while the copy is exhibited any errors and omissions in the roll may be corrected, but subject to this and the provisions of the Church Representation Rules r 1(2) (see PARA 591), no names must be added to or removed from the roll during the period in any year between the completion of the new roll and the close of the annual parochial church meeting: r 2(7); SI 1994/3118. After 'the new role' insert 'it will come into effect': Church Representation Rules r 2(7) (amended by SI 2004/1889).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(10) THE CHURCH ELECTORAL ROLL/595. Certification of numbers on rolls.

595. Certification of numbers on rolls.

Not later than 1st July in any year immediately preceding a year in which elections of members of deanery synods or diocesan synods will fall due¹, and in any year being the fourth year after the last preceding election of members of the House of Laity of the General Synod², the number of names on the roll of each parish must be certified to the secretary of the diocesan synod and the secretary of the deanery synod³. The certificate must be signed by the chairman, vice-chairman, secretary or electoral roll officer of the parochial church council³, and a copy must be affixed at or near to the principal door of every church in the parish and every building licensed for public worship in the parish when the certificate is sent to the secretary of the diocesan synod, and must remain so affixed for not less than fourteen days⁴. Any question as to the accuracy of any such certificate must be decided in such manner as the diocesan synod or the bishop's council and standing committee⁵ shall determine⁶.

1 Church Representation Rules, r 4 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3. As to deanery synods, see PARA 527 et seq ante; as to diocesan synods, see PARA 503 et seq ante.

2 Church Representation Rules, r 4 (1) (b). In the event, however, of an early dissolution of the General Synod (see PARA 395 ante), special directions may be given by the synod or its presidents as to the time within which the numbers are to be certified: r 4 (1) proviso. As to the House of Laity, see PARA 418 et seq ante.

3 Ibid r 4 (1) (amended by S.I. 1973 No. 1865).

4 Ibid r 4 (2).

5 See PARA 516 ante.

6 Church Representation Rules, r 4 (3) (amended by S.I. 1973 No. 1865).

UPDATE

595 Certification of numbers on rolls

TEXT AND NOTES--Rule 4 substituted: SI 1994/3118. Not later than 1 June the chairman, vice-chairman, secretary or church electoral roll officer of the parochial church council must notify in writing the secretary of the diocesan synod of the number of names on the roll of each parish as at the date of the annual meeting and a copy of such notification must be fixed at or near to the principal door of every church in the parish and every building licensed for public worship in the parish when notification is sent to the secretary of the diocesan synod, and must remain so affixed for a period of not less than 14 days: r 4 as substituted.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(10) THE CHURCH ELECTORAL ROLL/596. Appeals.

596. Appeals.

An appeal lies by any person aggrieved against any enrolment or refusal of enrolment on the roll of a parish¹, or against the removal of any name or the refusal to remove any name from the roll². An error in the electoral roll is not a ground of appeal against the result of any election unless (1) either it has been determined that there has been such an error or the question is awaiting determination³; and (2) the error would or might be material to the result of the election⁴.

Notice of the appeal must be given in writing to the rural dean or, if there is no rural dean, to the archdeacon⁵. Unless the parties agree to a settlement of their dispute the appeal must be referred to the electoral commission constituted by the diocesan synod⁶; and the commission must appoint three or a greater odd number of its members to consider and decide the appeal⁷. Their decision is final⁸.

1 Church Representation Rules, r 36 (1) (a), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865).

2 Ibid r 36 (1) (b).

3 See under ibid r 36.

4 Ibid r 36 (3).

5 Ibid r 36 (2). The period allowed for giving notice of appeal is not more than fourteen days from the date of the enrolment, removal or refusal; or, if the appeal arises on the revision of the roll or the preparation of a new roll, not more than fourteen days from the first publication of the revised or new roll: r 36 (2) (a). The time may, however, be extended at the discretion of the members of the electoral commission: r 36 (7).

6 As to the electoral commission, see PARA 512 ante.

7 Church Representation Rules, r 36 (5) (amended by S.I. 1973 No. 1865). All or a majority of the members appointed must be laymen: r 36 (5). They must consider all the relevant circumstances, and are entitled to inspect all documents and papers relating to the subject matter of the appeal and to be furnished with all information respecting the appeal which they may require; and they must give the parties an opportunity of appearing before them in person or through a legal or other representative: r 36 (6).

8 Ibid r 36 (5). The courts will not interfere with a decision of a lay electoral commission acting in no way contrary to natural justice: see *Stuart v Haughley Parochial Church Council* [1936] Ch 32, CA, where an appeal against a decision of a commission under corresponding provisions of earlier rules ordering the reinstatement of a name on an electoral roll was dismissed.

UPDATE

596 Appeals

TEXT AND NOTES--Rule 36 now r 43; SI 1994/3118. Right of appeal also with regard to enrolment, or refusal of enrolment on the registers of lay or clerical electors and with regard to the removal of any name, or the refusal to remove any name, from the registers: r 43(1); SI 1989/2094.

TEXT AND NOTE 1--Persons with a right of appeal under r 43; SI 1989/2094 are a person who is refused enrolment on the roll or register, a person whose name is removed from the roll or register, or any person whose name is entered on the roll or register who

wishes to object to the enrolment or removal of the name of any other person on that roll or register: r 43(2); SI 1989/2094.

TEXT AND NOTE 4--As to errors in the electoral roll of a chaplaincy in the diocese in Europe (see PARAS 316, 415) as grounds of appeal against the result of an election to the House of Laity of the General Synod by the diocesan electors of that diocese, see r 44(7); SI 1989/2094.

NOTE 4--Now r 44(6); SI 1989/2094.

TEXT AND NOTE 5--In an appeal concerning the roll of a parish, notice of appeal must be given in writing to the lay chairman of the deanery synod; in an appeal concerning the register of lay or clerical electors, notice of appeal must be given in writing to the Chairman of the House of Laity or the Chairman of the House of Clergy of the diocesan synod as the case may be: r 43(3); SI 1989/2094.

Rule 36(2)(a) now r 43(4); SI 1989/2094. Power to extend time of appeal now contained in r 45(c); SI 1989/2094, SI 1994/3118.

TEXT AND NOTES 6, 7--Unless the appellant withdraws the appeal in writing, the chairman of the House concerned of the diocesan synod or the lay chairman of the deanery synod, as the case may be, must within 14 days refer any appeal to the bishop's council and standing committee of the diocese: r 43(5); SI 1989/2094. That council must appoint three or a greater odd number of their lay members or clerical members to consider and decide the appeal: r 43(5); SI 1989/2094, SI 1994/3118.

Rule 36(6) now r 45(a), (b); SI 1989/2094; see PARA 512.

NOTE 8--Now r 45(d)(iii) (see PARA 426).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/597. Origin of guild churches.

(11) GUILD CHURCHES

597. Origin of guild churches.

The City of London has many old parish churches and a vast number of persons who work in the City and live elsewhere, but there are very few resident parishioners and very few for whom Sunday services are required. When, therefore, the destruction wrought by the 1939-45 war once again brought to the fore the problem of City churches, the situation was met by the passing of the City of London (Guild Churches) Act 1952¹. This private Act named sixteen churches² in the City which could be designated guild churches³. Any church so designated ceases to be a parish church with a territorial parish⁴.

¹ See also the City of London (Guild Churches) Act 1960. The Acts of 1952 and 1960 may be cited together as the City of London (Guild Churches) Acts 1952 and 1960: s 1 (2).

² The sixteen churches named by the Act are All Hallows London Wall, St Andrew Holborn, St Benet Paul's Wharf, St Botolph without Aldersgate, St Dunstan in the West, St Ethelburga Bishopsgate, St Katherine Cree, St Lawrence Jewry, St Margaret Pattens, St Martin Ludgate, St Mary Abchurch, St Mary Aldermanbury, St Mary Aldermay, St Mary Woolnoth, St Michael Paternoster Royal, and St Nicholas Cole Abbey: City of London (Guild Churches) Act 1952, s 3 (1), Sch. 1. As to the power to designate additional churches, see PARA 599 post.

³ Ibid s 4. Great difficulty was experienced in finding a suitable name for these churches. The name eventually chosen does not seem to have any real significance and does not imply any connection with a guild of any description.

⁴ See PARA 598 post.

UPDATE

597 Origin of guild churches

NOTE 2--City of London (Guild Churches) Act 1952 Sch 1 amended: Constitutional Reform Act 2005 Sch 4 para 42 (not yet in force).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/598. Purposes and status of guild churches.

598. Purposes and status of guild churches.

The primary purpose of a guild church and of its minister is to serve and minister to the non-resident daytime population of the City¹, but a subsidiary purpose is to provide a reserve of clerks in holy orders with special qualifications in scholarship, preaching, pastoral work or administration or with other particular qualifications rendering them suitable for specialised work elsewhere². The territory which formerly formed the parish of the guild church becomes part of another parish³, but the minister, the guild church and its churchyard are free from the jurisdiction and control of the incumbent, churchwardens and parochial church council of the parish within which they become situated, although they remain within the deanery, archdeaconry and diocese⁴. In fact a new entity, a parish church without a territorial parish, comes into being. The freehold of the guild church and its churchyard are vested in the Bishop of London⁵, except in the case of St Lawrence Jewry which is the official church of the City Corporation and the freehold of which is vested in the corporation⁶.

1 City of London (Guild Churches) Act 1952, s 5 (1).

2 Ibid preamble.

3 See PARA 599 post.

4 City of London (Guild Churches) Act 1952, s 5 (2).

5 Ibid s 5 (3).

6 Ibid ss 5 (3), 29.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/599. Creation and constitution of guild churches.

599. Creation and constitution of guild churches.

The Bishop of London is empowered to designate and establish any of the sixteen scheduled churches¹ as a guild church², by a certificate which is to be registered in the registry of the diocese of London and of which notice must be given in the London Gazette³. He may also designate and establish, in like manner and with like effect, any other church in the City⁴ which is not a parish church⁵. Once designated in each guild church there is a patron or patrons⁵, a minister (who is styled a vicar), one or more stipendiary curates (if required), churchwardens, sidesmen (if required), a guild church council, a church electoral roll and a guild church clerk⁶.

The designation of a church as a guild church does not affect the continuance, status or boundaries of any parish or extra-parochial place as existing for civil purposes, or any civil rights, privileges or obligations⁷.

1 For the names of the sixteen churches, see PARA 597 note 2 ante.

2 City of London (Guild Churches) Act 1952, s 4 (1). In the case of a church which at the date of the passing of the Act (1st August 1952) was a parish church, no certificate may be given unless and until that church has, under a reorganisation scheme (see s 3 (1)), ceased to be a parish church: s 4 (1) proviso. The reference here is to schemes made under the Reorganisation Areas Measure 1944 and 1949 (repealed), the relevant provisions of which have been superseded by the provisions of the Pastoral Measure 1968 relating to pastoral schemes (see PARA 856 et seq post). As to the extent to which the Pastoral Measure 1968 applies to churches after they have become guild churches, see PARA 608 post.

3 City of London (Guild Churches) Act 1952, s 4 (2). Certificates, designating all the churches except St Mary Aldermanbury, were given on 4th February 1954.

4 City of London (Guild Churches) Act 1960, s 3 (1).

5 Ibid s 3 (1) proviso.

6 City of London (Guild Churches) Act 1952, s 6 (1). See PARAS 600-605 post.

7 Ibid s 34.

UPDATE

599 Creation and constitution of guild churches

NOTE 2--1952 Act s 3(1) amended, s 4(1) proviso repealed: Statute Law (Repeals) Act 2004. 1968 Measure consolidated in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/600. Patronage and licensing of vicars.

600. Patronage and licensing of vicars.

The patrons of guild churches¹ are declared to have a right of patronage similar in all respects to the right of patronage enjoyed by the patron of a perpetual curacy². The right is capable of transfer in like manner as that of a benefice; it is, however, incapable of sale³. The vicar of a guild church must be licensed by the bishop⁴; and before being licensed he must make the declarations of assent⁵ and against simony⁶ and must take the oaths of canonical obedience and of allegiance and supremacy⁷.

If the Bishop of London refuses to license a person nominated to him by a patron, both patron and nominee have a right of appeal to the Archbishop of Canterbury and a judge of the Supreme Court⁸, and where the refusal is on grounds of doctrine or ritual they have the same remedies at common law as if the bishop had refused on those grounds to institute or admit a person nominated to a benefice⁹.

1 The patrons of the scheduled churches (see PARA 597 note 2 ante) are named in the City of London (Guild Churches) Act 1952, Sch. 1 (see s 7 (1)). In the case of additional guild churches (see PARA 599 ante) they are to be nominated in the bishop's certificate and treated as if included in Sch. 1: City of London (Guild Churches) Act 1960, s 3 (2), (3).

2 City of London (Guild Churches) Act 1952, s 8 (1). The interpretation of this provision, in the light of the Pastoral Measure 1968, s 87 (whereby all perpetual curacies were, with effect from 1st April 1969, converted into vicarages: see PARA 771 post), is left, it seems in some uncertainty.

3 City of London (Guild Churches) Act 1960, s 6 (1). If the bishop is not the patron his previous consent in writing is required: s 6 (2).

4 City of London (Guild Churches) Act 1952, s 8 (2), (3).

5 As to this declaration, see PARA 660 post.

6 As to this declaration, see PARA 834 post. It is to be with necessary variations to adapt it to the case of a guild church: City of London (Guild Churches) Act 1952, s 8 (4).

7 Ibid s 8 (4); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2: Revised Canons Ecclesiastical, Canon C15 para 1 (5) (substituted by Amending Canon No. 4). As to the oaths, see PARA 660 post.

8 City of London (Guild Churches) Act 1952, s 8 (6), applying with necessary variations the Benefices Act 1898, s 3, as to which see PARA 821 post.

9 City of London (Guild Churches) Act 1952, s 8 (6). For the remedies of patrons and nominees, see PARA 820 post. Although the incumbent of a benefice or the holder of another ecclesiastical office may be nominated to a vacancy in a guild church the bishop may refuse his licence on the ground that the benefice or office cannot properly be combined with the office of vicar of the guild church: Pastoral Measure 1968, s 92 (5).

UPDATE

600 Patronage and licensing of vicars

NOTE 2--1968 Measure consolidated in Pastoral Measure 1983, which does not contain this provision.

TEXT AND NOTE 6--This declaration is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1, Schedule; Amending Canon No 5.

NOTE 9--1968 Measure s 92(5) now 1983 Measure s 89(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/601. Exercise and lapse of rights of patronage.

601. Exercise and lapse of rights of patronage.

Under a procedure akin to that provided for by the Benefices (Exercise of Rights of Presentation) Measure 1931¹, when a vacancy or impending vacancy in a guild church is notified², either the guild church council³ or the incumbent or both of them may make written representations to the patron as to the conditions, needs and traditions of the guild church, but without mentioning the name of a particular clerk⁴. In exercising his right of patronage the patron must have regard to the primary purpose of the guild church⁵, to any representations so made and to the special qualifications of the person chosen which render him suitable to offer specialised ministrations or services elsewhere⁶. With the written consent of the patron and after consultation with the guild church council the bishop has power to postpone the exercise of the right of patronage⁷.

The right of patronage of a guild church is liable to lapse in the same way as the right of patronage to a benefice, but subject to special provisions in respect of the calculation of time⁸.

1 See PARA 835 post; that Measure does not apply to guild churches: City of London (Guild Churches) Act 1952, s 9 (6).

2 A vacancy is deemed to occur on the day on which the church becomes a guild church: *ibid* s 9 (2). The bishop notifies a vacancy to the patron (unless the bishop is patron), the guild church council and the incumbent, if any, of the parish in which the guild church is situate: s 9 (1); City of London (Guild Churches) Act 1960, s 4. 'Patron' means a person entitled to nominate to the vacancy: City of London (Guild Churches) Act 1952, s 9 (5); City of London (Guild Churches) Act 1960, s 4.

3 As to guild church councils, see PARA 604 post.

4 City of London (Guild Churches) Act 1952, s 9 (3); City of London (Guild Churches) Act 1960, s 4.

5 See PARA 598 ante.

6 City of London (Guild Churches) Act 1952, s 9 (4). The incumbent of a benefice or the holder of another ecclesiastical office may be nominated to a vacancy in a guild church, but the bishop may refuse his licence on the ground that the benefice or office cannot properly be combined with the office of vicar of the guild church: Pastoral Measure 1968, s 92 (5).

7 City of London (Guild Churches) Act 1960, s 5. The power is exercised by written declaration under the bishop's seal, and may be for a period not exceeding five years: s 5 (1). Cf. the similar provisions in the Pastoral Measure 1968, s 67, for which see PARA 813 post.

8 See the City of London (Guild Churches) Act 1952, s 10 (1); and see PARA 826 et seq post.

UPDATE

601 Exercise and lapse of rights of patronage

TEXT AND NOTE 1--The 1931 Measure is replaced by the Patronage (Benefices) Measure 1986 and the 1952 Act s 9(6) is amended accordingly: 1986 Measure Sch 4 para 11.

NOTE 6--1968 Measure consolidated in Pastoral Measure 1983; see s 89(5).

NOTE 7--1960 Act s 5 amended: Statute Law (Repeals) Act 2004. 1968 Measure s 67 now 1983 Measure s 67; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21.

TEXT AND NOTE 8--Amended by the substitution of the words 'was at the passing of the City of London (Guild Churches) Act 1952' for the word 'is': s 10(1); Patronage (Benefices) Measure 1986 Sch 4 para 12.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/602. Vicars and curates of guild churches.

602. Vicars and curates of guild churches.

The minister appointed to officiate in a guild church is for the purpose of style and designation only called the vicar¹. He must be in priest's orders² and has a cure of souls of the persons on the guild church electoral roll³. In relation to the guild church and its churchyard he has all the rights and duties which an incumbent has in relation to the parish church and churchyard⁴, and is subject to ecclesiastical discipline in the same manner as an incumbent⁵. He is not subject to the jurisdiction of the incumbent of the parish in which the guild church is situate, but only to that of the Bishop and Archdeacon of London⁶.

Vicars of guild churches are, in the first instance, entitled to hold office for five years, but the appointment may be extended for further periods of three years⁷ and, with the bishop's consent, a vicar may resign at any time⁸. Their stipends are paid from the London diocesan stipends fund⁹ and they may not undertake additional duties elsewhere, except with the Bishop of London's approval and subject to certain limitations¹⁰.

One or more stipendiary curates may be licensed to assist the vicar of a guild church by permission of the bishop and at such stipend as he shall approve¹¹. Such a curate is in the same position in law as a curate licensed to assist an incumbent¹².

1 City of London (Guild Churches) Act 1952, s 6 (1) (b). A guild church is not a benefice within the meaning of the Pluralities Act 1838 (as to which see PARA 768 post): City of London (Guild Churches) Act 1952, s 12 (11).

2 Ibid s 12 (1).

3 Ibid s 12 (2). As to the guild church electoral roll, see PARA 603 post.

4 Ibid s 12 (2). As to the incumbent's rights, see PARA 689 et seq post.

5 Ibid s 12 (9), (10). As to discipline, see PARA 1350 et seq post.

6 Ibid s 12 (3).

7 Ibid s 12 (6).

8 Ibid s 12 (7).

9 Ibid s 12 (8), which provides for the amount, and increases, of the stipend.

10 Ibid s 12 (5).

11 Ibid s 14 (1); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2, applying, mutatis mutandis, the Clerical Subscription Act 1865, for which see PARA 706 et seq post.

12 City of London (Guild Churches) Act 1952, s 14 (1). He is, however, free from the jurisdiction and control of the incumbent of the parish in which the guild church is situate: s 14 (2).

UPDATE

602 Vicars and curates of guild churches

TEXT AND NOTE 8--There is a compulsory retirement age of 70: Ecclesiastical Offices (Age Limit) Measure 1975 s 1. The Bishop of London may authorise continuance in office for up to two years: s 3; Bishops (Retirement) Measure 1986 s 11(1).

NOTE 8--1952 Act s 12(10) amended: Church of England (Miscellaneous Provisions)
Measure 2000 s 3.

NOTE 9--Amended by Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/603. Guild church electoral rolls.

603. Guild church electoral rolls.

The persons entitled to have their names entered on a guild church electoral roll¹ are lay members of the Church of England of either sex, of seventeen years of age or upwards who are baptised and declare that they are members of the Church of England and that they do not belong to any religious body which is not in communion with the Church of England and who make written application for enrolment to the vicar or, if there is a vacancy, to the Archdeacon of London². The consent of the vicar (or archdeacon) is required for each enrolment³, but a person aggrieved by a refusal of consent may appeal to the electoral commission for the diocese of London⁴.

No person is entitled to be on the roll of more than one guild church or on a guild church electoral roll so long as he is on the roll of a parish in the City of London⁵.

1 See the City of London (Guild Churches) Act 1952, s 6 (1) (g). As to the effect of entry on a church electoral roll, as to qualification for attendance and voting at church meetings and as to membership of councils and synods under the system established by the Synodical Government Measure 1969 for representation of the laity, see PARA 591 ante; and see the City of London (Guild Churches) Act 1952, s 6 (2). For the purposes of qualification for election to a deanery or diocesan synod or to the House of Laity of the General Synod, or for ex officio membership of a deanery synod, a person whose name is on a guild church roll is deemed to be on the roll of the parish in which the guild church is: Church Representation Rules, r 4A, contained in the Synodical Government Measure 1969, Sch. 3 (added by S.I. 1973 No. 1865).

2 City of London (Guild Churches) Act 1952, s 15 (2). These provisions are similar to those which apply to church electoral rolls in parishes (see PARA 591 et seq ante), except that they contain no requirement of residence or habitual attendance at public worship and that the provisions respecting church membership have not been amended to correspond with the Church Representation Rules, r 1 (2) (b) (substituted by S.I. 1973 No. 1865).

3 City of London (Guild Churches) Act 1952, s 15 (2) (i); City of London (Guild Churches) Act 1960, s 7.

4 City of London (Guild Churches) Act 1952, s 15 (2) (i) proviso. The commission is described as constituted under the Rules for the Representation of the Laity, which were replaced by the Church Representation Rules: see the Synodical Government Measure 1969, s 7 (1). As to the electoral commission, see the Church Representation Rules, r 36 (5) (amended by S.I. 1973 No. 1865), and PARA 512 ante.

5 City of London (Guild Churches) Act 1952, s 15 (2) (ii), (iii).

UPDATE

603 Guild church electoral rolls

NOTE 1--Rule 4A renumbered as r 5: SI 1994/3118.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/604. Guild church councils.

604. Guild church councils.

The guild church council¹ consists of the vicar, the stipendiary curate², the churchwardens (being lay communicants), lay members of the General Synod or the diocesan or deanery synods who are on the guild church roll, lay representatives elected by the annual church meeting³, and co-opted members, if any⁴. The guild church council corresponds to the parochial church council of a parish⁵, and its primary duty is to co-operate with the vicar in the initiation, conduct and development of church work in or in connection with the guild churches⁶.

Under a scheme prepared by the London diocesan conference⁷, guild church councils have similar powers to those of parochial church councils⁸ and elect representatives to the deanery synod⁹.

1 See the City of London (Guild Churches) Act 1952, s 6 (1) (f). The council is a body corporate by the name of the guild church council of the particular guild church, and has perpetual succession: s 17 (3).

2 If more than one curate has been appointed, the vicar nominates one to sit on the guild church council: *ibid* s 17 (1) (b) (i).

3 The guild church meeting, of all persons on the roll of the guild church, must be held annually not later in the year than in Easter week or in the following week: *ibid* s 16. As to the qualifications and election of lay representatives, see also s 6 (2)-(4).

4 *Ibid* s 17 (1); Synodical Government Measure 1969, ss 2 (2), 4 (7), 5 (2). Where a guild church is a ward church there are additional *ex officio* members: see PARA 609 post.

5 As to parochial church councils, see PARA 568 et seq ante.

6 City of London (Guild Churches) Act 1952, s 17 (2).

7 The London diocesan conference is now replaced by the diocesan synod: see the Synodical Government Measure 1969, s 4 (7).

8 For the powers of parochial church councils, see PARA 574 ante.

9 City of London (Guild Churches) Act 1952, s 18. Notice of the scheme was published in the .. London Gazette on 17th September 1954. The deanery synod replaced the ruridecanal conference under the Synodical Government Measure 1969: see s 5 (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/605. Churchwardens, sidesmen and clerks.

605. Churchwardens, sidesmen and clerks.

Two¹ churchwardens are to be chosen at the annual guild church meeting² in accordance with a procedure similar to that which applies to the choosing of churchwardens for a parish³. Those eligible for the office are persons eligible to be churchwardens of some parish in the City of London or who are on the guild church electoral roll⁴. Churchwardens of guild churches are admitted in the same manner as churchwardens of a parish and have similar powers, duties and liabilities⁵. Sidesmen may be appointed by the guild church meeting from among those on the electoral roll⁶. Subject to certain rights of former parish clerks⁷ the guild church council may, jointly with the vicar, appoint a guild church clerk and determine his salary and the conditions of the tenure of his office⁸.

1 More than two may be chosen if on 1st August 1952 the guild church was the church of a parish having more than two churchwardens: City of London (Guild Churches) Act 1952, s 19 (2) proviso.

2 See PARA 604 note 3 ante.

3 City of London (Guild Churches) Act 1952, s 19 (2), (4). For the method of choosing churchwardens in a parish, see PARA 544 et seq ante. As to existing churchwardens of a parish church which becomes a guild church, see s 19 (1).

4 Ibid s 19 (3). They must not however, hold the office of churchwarden elsewhere in the City: s 19 (3) proviso. They must be actual communicant members of the Church of England (for the meaning of which see PARA 420 note 1 ante), except where the bishop otherwise permits: Churchwardens (Appointment and Registration) Measure 1964, s 10 (1).

5 City of London (Guild Churches) Act 1952, s 19 (5), (6). For the powers and duties of churchwardens of parishes, see PARA 550 et seq ante.

6 Ibid s 20.

7 See ibid s 21 (1).

8 Ibid s 21 (2). He is eligible for membership of the Worshipful Company of Parish Clerks: s 21 (3). As to parish clerks generally, see PARA 558 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/606. Services.

606. Services.

Subject to the jurisdiction of the bishop and the archdeacon, the vicar has the control of all services held in a guild church and is under no obligation to hold any public service on a Sunday¹.

The Bishop of London may license guild churches for the solemnisation of marriages between persons of whom at least one is on the church electoral roll². Baptism may be solemnised in the case of a person under eighteen, one of whose parents is on the electoral roll, and of persons of eighteen and upwards who intend to apply for enrolment on the electoral roll and of any other person with the written consent of the incumbent of the parish in which that person resides³.

1 City of London (Guild Churches) Act 1952, s 12 (4).

2 Ibid s 22 (1). A guild church so licensed is deemed to be the usual place of worship of persons on the electoral roll for the purposes of the Marriage Act 1949, ss 6 (4), 15 (1) (b), 35 (3): City of London (Guild Churches) Act 1952, s 22 (2). Prescribed fees are payable to the vicar: s 22 (3). As to register books, see s 22 (4). Subject to the foregoing provisions the law relating to the solemnisation and registration of Church of England marriages applies to marriages in guild churches: s 22 (5).

3 Ibid s 23.

UPDATE

606 Services

NOTE 2--1952 Act s 22(4) amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/607. Faculties.

607. Faculties.

The Faculty Jurisdiction Measure 1964¹ applies mutatis mutandis to guild churches as it applies to parish churches². In faculty proceedings the vicar and churchwardens of a guild church are deemed to have an interest as such and any person on the electoral roll of a guild church is deemed to have an interest as though the church were a parish church and he a parishioner of that parish³.

1 See PARA 1306 et seq post.

2 City of London (Guild Churches) Act 1952, s 26 (2).

3 Ibid s 26 (1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/608. Redundancy provisions.

608. Redundancy provisions.

A declaration of redundancy may be made by a pastoral scheme¹ with respect to a guild church (other than St Lawrence Jewry), and appropriate provision may be made, either by the pastoral scheme or by a redundancy scheme², for the future use or disposal of the church or any part of it, and any churchyard or other land annexed or belonging to the church³. When a scheme making such provision comes into operation the City of London (Guild Churches) Acts 1952 and 1960 cease to apply to the church concerned⁴. Provision may also be made by pastoral scheme with respect to the churchyard or other land annexed or belonging to a guild church (other than St Lawrence Jewry), not being a church to which a declaration of redundancy relates⁵.

1 See PARA 856 et seq post. Save as indicated in this paragraph and in PARA 600 note 9 ante, nothing in the Pastoral Measure 1968 or in any scheme or order made under it applies to or affects any guild church: s 92 (6).

2 See PARA 1121 post.

3 Pastoral Measure 1968, s 92 (1). In the case of a pastoral scheme affecting a guild church, the interested parties (see PARA 862 post) include the vicar, the patron and the guild church council: s 92 (4).

4 Ibid s 92 (2).

5 Ibid s 92 (3). See also s 30, and PARA., 1074 post.

UPDATE

608 Redundancy provisions

NOTES--1968 Measure consolidated in Pastoral Measure 1983; see s 89.

NOTE 5--See also ibid s 30.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/2. THE CONSTITUTION OF THE CHURCH OF ENGLAND/(11) GUILD CHURCHES/609. Ward churches.

609. Ward churches.

On the representation of the alderman and common councilmen (or a majority of them) of any ward in the City of London, the bishop may designate and establish as the official church of the ward any parish church or guild church situate in the ward or in a ward adjacent to it¹. The bishop has power, upon representations from the aldermen and common councilmen, to revoke this designation and establishment and substitute another church as the official ward church².

Where a parish church or a guild church becomes the official church of a ward, the alderman and comon coucilmn, to revoke this designation and establishment and communicants, appointed annually by the alderman and common councilmen of the ward, become additional ex officio members of the parochial church council or guild church council as the case may be³.

1 City of London (Guild Churches) Act, 1952, s 32 (1), (2). This is effected by the bishop giving a certificate with the consent of the parochial church council or the guild church council as the case may be; the certificate must be sent to the diocesan registrar and a copy to the town clerk and a notice published in the London Gazette by the diocesan registrar: s 32 (2). Upon such publication the church specified becomes the official church of the ward in question: s 32 (3).

2 City of London (Guild Churches) Act 1960, s 8.

3 See the City of London (Guild Churches) Act 1952, s 32 (4) (parish churches), s 32 (5) (guild churches). As to the constitution of the parochial church council, see PARA 569 et seq ante; and as to the constitution of guild church councils, see PARA 604 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(i) Introduction/610. Status and classification.

3. CATHEDRALS

(1) CONSTITUTION OF CATHEDRALS

(i) Introduction

610. Status and classification.

In every diocese except Sodor and Man there is a cathedral (more precisely, a cathedral church), so named, it is said, because it contains the seat or throne of the bishop, and often described as the mother church of the diocese¹. Notwithstanding this relationship with the bishop and the diocese, the constitutional status of the cathedral is, apart from the bishop's powers as visitor², one of substantial independence; in particular, it is exempt not only from diocesan administrative control but also from the jurisdiction of the consistory court, including the necessity of obtaining faculties³.

Each cathedral has its own constitution and statutes⁴ by which provision is made for a governing body, for the appointment and functions of a dean or provost and of other clergy and officers, and for other matters relating to the organisation and business of the cathedral church. In many cases the constitution and statutes have a long history, during which they have been revised from time to time. The latest general revision was carried out under the provisions of the Cathedrals Measure 1963⁵.

Cathedrals are classified in that Measure as either dean and chapter cathedrals or parish church cathedrals, with capitular bodies headed by deans and provosts respectively⁶. An older classification, dating back to the time of the Reformation and now mainly of historical interest, was based on the distinction between cathedrals of the old foundation and those of the new foundation⁷.

1 See Phillimore, *Ecclesiastical Law* (2nd Edn) 123. The expression 'mother church of the diocese' is used in the Cathedrals Measure 1963, s 9(2).

2 See PARA 617 post.

3 See PARA 1309 post.

4 So far as they concern the internal regulation of the cathedral and its services, these statutes are part of the ecclesiastical law enforced by the ecclesiastical courts alone: *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239, [1945] 1 All ER 479.

5 See PARA 611 post.

6 See PARAS 618, 619, 640 post. There are in England 28 dean and chapter cathedrals and 14 parish church cathedrals: see PARA 615 note 15 post. 'Capitular body' means in the case of a dean and chapter cathedral, the dean and chapter, and in the case of a parish church cathedral, the cathedral chapter: Cathedrals Measure 1963, s 52 (1); see PARA 636 post.

7 Cathedrals of the old foundation were those which before the Reformation had been in the charge of secular priests (ie York, St Paul's (London), Referred, Lincoln, Lichfield, Chichester, Exeter, Salisbury and Wells). Cathedrals of the new foundation were those which had been monastic and in which, upon the dissolution of the monasteries, the monks had been replaced by secular canons (ie Canterbury, Winchester, Worcester, Ely, Carlisle, Durham, Rochester and Norwich). In addition the five cathedrals created de novo by Henry VIII (ie Chester, Peterborough, Oxford, Gloucester and Bristol) have sometimes been described as of the new

foundation, but the description is not, in the strict sense, applicable to the cathedrals of sees founded in more recent times, as to which see PARAS 455, 456 ante.

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(i) Introduction/610A. Governing bodies and financial provisions.

610A. Governing bodies and financial provisions.

1. The Transitional Council

For each cathedral in existence on 30 June 1999 there is to be a body called the Transitional Council whose duty it is to frame, with the consent of the bishop¹, as soon as is practicable, an instrument providing for a constitution for the cathedral, and an instrument providing for statutes for the cathedral, in accordance with the Cathedrals Measure 1999².

The membership of the Transitional Council must consist of: (1) the bishop³; (2) the dean or provost, as the case may be, who must be chairman⁴; (3) two residentiary canons⁵ appointed by the residentiary canons⁶; (4) one non-residentiary canon⁷ appointed by the non-residentiary canons from amongst themselves⁸; and (5) five lay persons appointed by the bishop after consultation with the dean or provost and the bishop's council, being persons having experience in connection with the work of the cathedral or the ability to reflect local, diocesan, ecumenical or wider interests in that connection⁹. The chairman has a second or casting vote in proceedings of the Transitional Council¹⁰.

If the Archbishops of Canterbury and York are satisfied that a constitution and statutes complying with the provisions of the Cathedrals Measure 1999 Pt I¹¹ have been framed in relation to a particular cathedral, they may jointly appoint the date on which certain provisions¹² of the Measure are to apply in relation to that cathedral ('the relevant date'), and the constitution and statutes come into operation on that date¹³. The Transitional Council ceases to exist on the relevant date¹⁴.

If, in relation to any cathedral, the instruments required to be made¹⁵ have not been made by such date as may be determined by the Archbishops of Canterbury and York acting jointly it is the duty of the dean or provost to send to the bishop of the diocese concerned and to the Secretary-General of the General Synod a report indicating the stage reached in the production of those documents, the reason for the delay and the date on which the Transitional Council expects that the instruments will be made¹⁶. Further reports must be made when so requested by the Archbishops¹⁷.

1 'Bishop' means the bishop of the diocese in which the cathedral is situated: Cathedrals Measure 1999 s 35(1).

2 Ibid s 38(1), Sch 1 para 1. For the purposes of the Transitional Council, ss 29-32 (see PARA 610A.10) have effect as if: (1) the references to the Council were references to the Transitional Council; (2) the references to the common seal of the cathedral were references to the existing seal; and (3) the references to an instrument or draft instrument were references to an instrument or draft instrument under Sch 1 para 1: Sch 1 para 2.

3 Ibid Sch 1 para 3(a).

4 Ibid Sch 1 para 3(b).

5 'Residentiary canon' includes a stipendiary canon: ibid s 35(1). For provisions concerning residentiary canons see PARA 610A.7. As to canons generally see PARA 643 et seq.

6 Ibid Sch 1 para 3(c).

7 'Non-residentiary canon' includes a prebendary who is not a residentiary canon: ibid s 35(1).

8 Ibid Sch 1 para 3(d).

9 Ibid Sch 1 para 3(e).

10 Ibid Sch 1 para 4.

11 Ie ibid Pt I (ss 1-27).

12 Ie ibid Pt I (ss 1-27), Pt II (ss 28-32) and ss 36, 39.

13 Ibid s 38(2). Until the relevant date Pts I, II and ss 36, 39 do not apply in relation to the cathedral, and the Cathedrals Measure 1963 and any enactment mentioned in the Cathedrals Measure 1999 s 39, Sch 2 (minor and consequential amendments), Sch 3 (repeals) continue to apply in relation to the cathedral: s 38(3).

14 Ibid Sch 1 para 5.

15 Ie required to be made under ibid Sch 1 para 1.

16 Ibid Sch 1 para 6.

17 Ibid Sch 1 para 6.

2. The Council

For each cathedral there is to be, as from the relevant date¹, a body called the Council, a body called the Chapter² and a body called the College of Canons³.

The constitution of each cathedral must provide for the establishment of the Council⁴. The membership must consist of: (1) the chairman⁵; (2) the dean⁶; (3) a prescribed⁷ number (not less than two nor more than five) of other members of the Chapter chosen by it⁸; (4) two members of the College of Canons appointed by it⁹; (5) a prescribed number (not less than two nor more than four) of lay persons, not being members of the Chapter, representing the interests of the cathedral community¹⁰ elected in the prescribed manner¹¹; and (6) a prescribed number (not less than five nor more than ten) of persons appointed in the prescribed manner, being persons having experience in connection with the work of the cathedral or the ability to reflect local, diocesan, ecumenical or national interests in that connection¹². The members of the Council other than the dean will office for a term of years to be prescribed but are eligible for membership for further terms of office¹³.

The Council is under a duty to further and support the work of the cathedral, spiritual, pastoral, evangelistic, social and ecumenical, reviewing and advising on the direction and oversight of that work by the Chapter and, in particular, to: (a) consider proposals submitted by the Chapter in connection with the general direction and mission of the cathedral and to give advice on them to the Chapter¹⁴; (b) receive and consider the annual budget of the cathedral¹⁵; (c) receive and consider the annual report¹⁶; (d) consider proposals submitted by the Chapter in connection with the constitution and statutes of the cathedral with a view to their revision¹⁷; and (e) perform such other functions¹⁸ as may be prescribed¹⁹.

The Council may: (i) request reports from the Chapter on any matter concerning the cathedral²⁰; (ii) discuss and declare its opinion on any such matter²¹; and (iii) draw any matter to the attention of the Visitor²² or the Church Commissioners²³.

The Council must meet on at least two occasions in each calendar year²⁴. The bishop²⁵ is entitled to be present and speak, but not to vote, at meetings²⁶.

1 As to the relevant date see PARA 610A.1.

2 As to the Chapter see PARA 610A.3.

3 Cathedrals Measure 1999 s 2. As to the College of Canons see PARA 610A.4.

4 Ibid s 3(1).

5 Ibid s 3(4)(a). The bishop must appoint a lay person, not being a member of the Chapter, to be chairman, but (1) before doing so he must afford the Chapter an opportunity to express views both in general as to the appointment and as to any specific person proposed by the bishop for appointment; and (2) in deciding who to appoint he must have regard to those views: *ibid* s 3(3).

6 Ibid s 3(4)(b).

7 'Prescribed' means prescribed by the constitution of the cathedral: *ibid* s 35(1).

8 Ibid s 3(4)(c).

9 Ibid s 3(4)(d).

10 'Cathedral community' means persons over the age of 16 who regularly worship in the cathedral or are engaged in work or service connected with the cathedral in a regular capacity, and includes such other persons as may be prescribed: *ibid* s 35(1).

11 Ibid s 3(4)(e). 'In the prescribed manner' is to be construed as including a power for the constitution of a cathedral to specify the qualifications required for membership: s 35(6).

12 Ibid s 3(4)(f).

13 Ibid s 3(5).

14 Ibid s 3(6)(a).

15 Ibid s 3(6)(b).

16 Ibid s 3(6)(c).

17 Ibid s 3(6)(d). As to the revision of the constitution and statutes see Pt II (ss 28-32): see PARA 610A.10.

18 'Functions' includes powers and duties: *ibid* s 35(1).

19 Ibid s 3(6)(e).

20 Ibid s 3(7)(a).

21 Ibid s 3(7)(b).

22 As to the Visitor see PARA 610A.5.

23 Cathedrals Measure 1999 s 3(7)(c).

24 Ibid s 3(8).

25 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

26 Cathedrals Measure 1999 s 3(2).

3. The Chapter

The constitution of each cathedral must provide for the establishment of the Chapter¹. The membership must consist of the dean and all the residentiary canons² of the cathedral, and a prescribed³ number (not less than two nor more than seven) of other persons⁴, at least two-thirds of whom must be lay, chosen in the prescribed manner⁵. The constitution may provide for the administrator of the cathedral to be an additional member of the Chapter⁶.

A person is disqualified from being a member of the Chapter if he is disqualified from being a charity trustee⁷ and the disqualification is not for the time being subject to a waiver by the archbishop of the province concerned⁸ in respect of that Chapter, and a member who becomes disqualified must cease to be a member⁹. The dean must be the chairman, and has a second or casting vote; he must be a member of every committee of the Chapter¹⁰.

The Chapter is to be under a duty to direct and oversee the administration of the affairs of the cathedral and, in particular, to: (1) order the worship and promote the mission of the cathedral¹¹; (2) formulate, after consultation with the bishop¹², proposals in connection with the general direction and mission of the cathedral and submit them to the Council¹³ for its advice¹⁴; (3) prepare an annual budget for the cathedral¹⁵; (4) submit to the Council the annual report and audited accounts prepared by the Chapter¹⁶ and such other reports as may be requested by the Council on any matter concerning the cathedral¹⁷; (5) submit to the College of Canons¹⁸ the annual report and audited reports¹⁹; (6) keep under review the constitution and statutes of the cathedral and submit any proposals for their revision to the Council²⁰; (7) manage all property²¹ vested in the cathedral and the income accruing from it and, in particular, ensure that the necessary repairs and maintenance in respect of the cathedral and its contents and other buildings and monuments are carried out²²; and (8) perform such other functions²³ as may be prescribed²⁴.

The Chapter has the power to acquire and dispose of property on behalf of the body corporate²⁵ subject to any necessary consent²⁶, although money which forms part of the endowment of the cathedral must not be invested or used except as may be provided²⁷.

The Chapter holds the common seal of the cathedral and must affix it when required²⁸. The Chapter must meet on at least nine occasions in each calendar year²⁹.

1 Cathedrals Measure 1999 s 4(1). As from the relevant date (see PARA 610A.1), any reference in an enactment, instrument or other document to any of the following bodies is, unless the context otherwise requires, to be construed as a reference to the Chapter of the cathedral: (1) the dean and chapter; (2) the administrative chapter; (3) the administrative body; (4) the cathedral chapter; (5) the capitular body; and (6) the cathedral council: ss 36(1), s 38(2), (3).

2 For the meaning of 'residential canon' see PARA 610A.1 NOTE 5. For provisions concerning residential canons see PARA 610A.7; as to canons generally see PARA 643 et seq.

3 For the meaning of 'prescribed' see PARA 610A.2 NOTE 7.

4 Such persons must hold office for three years but are eligible for membership for further terms of office: Cathedrals Measure 1999 s 4(7).

5 Ibid s 4(2). As to the construction of 'in the prescribed manner' see PARA 610A.2 NOTE 11.

6 Ibid s 4(3).

7 Ie under the Charities Act 1993 s 72(1): see CHARITIES vol 8 (2010) PARA 273.

8 The archbishop of the province concerned may on the application of any person disqualified under the Cathedrals Measure 1999 s 4(4), waive his disqualification in respect of that Chapter, and any such waiver must be notified in writing to the person concerned: s 4(5).

9 Ibid s 4(4).

10 Ibid s 4(6).

11 Ibid s 4(8)(a).

12 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

13 As to the Council see PARA 610A.2.

14 Cathedrals Measure 1999 s 4(8)(b).

15 Ibid s 4(8)(c).

16 Ie under ibid s 27: see PARA 626-635. As to the revision of the constitution and statutes see Pt II (ss 28-32): see PARA 610A.10.

17 Ibid s 4(8)(d).

- 18 As to the College of Canons see PARA 610A.4.
- 19 Cathedrals Measure 1999 s 4(8)(e).
- 20 Ibid s 4(8)(f).
- 21 'Property' includes a thing in action and any interest in real or personal property: ibid s 35(1).
- 22 Ibid s 4(8)(g).
- 23 For the meaning of 'functions' see PARA 610A.2 NOTE 18.
- 24 Cathedrals Measure 1999 s 4(8)(h).
- 25 Ie the corporate body established in accordance with ibid s 9(1)(a): see PARA 610A.8.
- 26 Ie any consent required by ibid s 15: see PARA 626-635. This power may be exercised notwithstanding that the consideration for any transaction may not be the full consideration: s 15(3).
- 27 Ibid s 4(9). As to money which forms part of the endowment of the cathedral see further s 16; and see PARA 626-635. Any reference in the Cathedrals Measure 1999 to a power to acquire property must be construed as comprising a power to acquire property for any purpose connected with the cathedral and to acquire property by gift inter vivos or by will: s 35(4).
- 28 Ibid s 4(10).
- 29 Ibid s 4(11). Decisions taken by the Chapter in the absence of the dean are subject to the provisions of s 7(3) (see PARA 610A.6): s 4(12).

4. The College of Canons

The constitution of the cathedral must provide for the establishment of the College of Canons¹. The membership must consist of: (1) the dean²; (2) every suffragan bishop of the diocese³; (3) every full-time stipendiary assistant bishop of the diocese⁴; (4) every canon⁵ of the cathedral⁶; (5) every archdeacon of the diocese in question⁷.

The College of Canons must perform the functions conferred by the Appointment of Bishops Act 1533 on the dean and chapter⁸. The College must also: (1) receive and consider the annual report and audited accounts⁹; (2) discuss such matters concerning the cathedral as may be raised by any of its members¹⁰; and (3) perform such other functions as may be prescribed¹¹.

- 1 Cathedrals Measure 1999 s 5(1).
- 2 Ibid s 5(2)(a).
- 3 Ibid s 5(2)(b). As to suffragan bishops see PARAS 493-495.
- 4 Ibid s 5(2)(c). As to assistant bishops see PARA 473.
- 5 'Canon' includes a lay canon and a non-residentiary canon but not a minor canon: ibid s 35(1). As to canons generally see PARA 643 et seq. For the meaning of 'non-residentiary canon' see PARA 610A.1 NOTE 7.
- 6 Ibid s 5(2)(d).
- 7 Ibid s 5(2)(e).
- 8 Ibid s 5(3). As to those functions see PARAS 461-463.
- 9 Ibid s 5(4)(a). As to the report and accounts see PARA 626-635.5.
- 10 Ibid s 5(4)(b).

11 Ibid s 5(4)(c). For the meaning of 'functions' see PARA 610A.2 NOTE 18. For the meaning of 'prescribed' see PARA 610A.2 NOTE 7.

5. Provisions concerning bishops

The bishop¹ must have the principal seat and dignity in the cathedral². After consultation with the Chapter³ and subject to any provision in the statutes, he may officiate in the cathedral and use it in his work of teaching and mission, for ordinations and synods and for other diocesan occasions and purposes⁴. The Chapter must from time to time consult the bishop in respect of the general direction and mission of the cathedral, and the bishop may at any time seek the advice of the Chapter on any matter⁵.

The constitution of the cathedral must provide that the bishop is the Visitor thereof⁶. The bishop must as Visitor hear and determine any question as to the construction of the constitution and statutes⁷. The bishop may hold a visitation of the cathedral when he considers it desirable or necessary to do so or when requested by the Council⁸ or the Chapter⁹. In the course of a visitation, the bishop may give such directions to the Chapter, to the holder of any office in the cathedral or to any person employed by the cathedral as will, in the opinion of the bishop, better serve the due observance of the constitution of the statutes¹⁰.

The bishop may at any time propose for consideration by the Council amendments to the constitution and statutes¹¹.

1 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

2 Cathedrals Measure 1999 s 6(1).

3 As to the Chapter see PARA 610A.3.

4 Cathedrals Measure 1999 s 6(1).

5 Ibid s 6(2).

6 Ibid s 6(3).

7 Ibid s 6(4). It is the duty of any person or body on whom functions are conferred by or under the 1999 Measure to act in accordance with any such determination: s 6(7). For the meaning of 'functions' see PARA 610A.2 NOTE 18.

8 As to the Council see PARA 610A.2.

9 Cathedrals Measure 1999 s 6(5).

10 Ibid s 6(6). It is the duty of any person or body on whom functions are conferred by or under the 1999 Measure to act in accordance with any such direction: s 6(7).

11 Ibid s 6(9).

6. Provisions concerning deans

The principal dignitary of the cathedral, next after the bishop¹, is to be known as the dean². It is the duty of the dean as chairman of the Chapter³ to govern and direct on its behalf the life and work of the cathedral and, in particular, to: (1) ensure that Divine Service⁴ is duly performed in the cathedral⁵; (2) ensure that the constitution and statutes are faithfully observed⁶; (3) maintain good order and proper reverence in the cathedral⁷; (4) secure the pastoral care of all members of the cathedral community⁸; and (5) take all decisions necessary to deal with any emergency affecting the cathedral, pending consideration of the matter by the Chapter⁹.

The following steps must not be taken without the consent of the dean: (a) any alteration of the ordering of services in the cathedral¹⁰; (b) the settlement of the cathedral's budget¹¹; or (c) the implementation of any decision taken by the Chapter in the dean's absence¹².

If the office of dean is vacant, or the bishop considers that the dean will be unable to discharge any or all of his functions¹³ by reason of illness or absence or any other cause, the bishop must, after consultation with the Chapter, appoint a residentiary canon¹⁴ to carry out such functions as the dean is unable to discharge during the period in question¹⁵.

1 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

2 Cathedrals Measure 1999 s 7(1).

3 As to the Chapter see PARA 610A.3.

4 As to Divine Service see PARA 943 et seq.

5 Cathedrals Measure 1999 s 7(2)(a).

6 Ibid s 7(2)(b).

7 Ibid s 7(2)(c).

8 Ibid s 7(2)(d). As to the meaning of 'cathedral community' see PARA 610A.2 NOTE 10.

9 Ibid s 7(2)(e).

10 Ibid s 7(3)(a).

11 Ibid s 7(3)(b).

12 Ibid s 7(3)(c). In the case of a decision taken by the Chapter as to any matter other than one mentioned in head (a) or (b) in the TEXT, the dean's consent must be deemed to have been given for the purpose of head (c) in the TEXT after the expiry of one month following the date on which the decision was taken unless, within that period, the dean requests the Chapter to reconsider the decision at the next meeting of the Chapter, in which case the matter must be decided by a majority vote of those present and voting at the meeting, the dean having a second or casting vote: s 7(3) proviso.

13 For the meaning of 'functions' see PARA 610A.2 NOTE 18.

14 For the meaning of 'residentiary canon' see PARA 610A.1 NOTE 5. For provisions concerning residentiary canons see PARA 610A.7; as to canons generally see PARA 643 et seq.

15 Cathedrals Measure 1999 s 7(4). If any question arises whether such an appointment is justified, such question must be determined by the archbishop of the province: s 7(5).

7. Provisions concerning residentiary canons

The constitution of each cathedral must provide that the holders of at least two residentiary canonries¹ in the cathedral must be engaged exclusively on cathedral duties². If any question arises whether a person is engaged exclusively on cathedral duties that question must, after consultation with the Visitor³ and the Chapter⁴, be determined by the Church Commissioners, and if any person is dissatisfied with the decision of the commissioners he may appeal to the archbishop of the province, whose decision is final⁵.

1 For the meaning of 'residentiary canon' see PARA 610A.1 NOTE 5. As to canons generally see PARA 643 et seq. 'Cathedral duties' means duties, whether in the cathedral or in the diocese, which should, in the opinion of the Chapter after consultation with the bishop (see PARA 610A.1 NOTE 1), be discharged in or from the cathedral: Cathedrals Measure 1999 s 8(2). However, the archbishop of the province and the Church Commissioners acting jointly may in special circumstances direct that the holder of a residentiary canonry who is normally engaged exclusively on cathedral duties must, for such period as they may specify, be treated as so engaged notwithstanding that he is performing duties other than cathedral duties: s 8(2) proviso.

2 Ibid s 8(1).

3 As to the Visitor see PARA 610A.5.

4 As to the Chapter see PARA 610A.3.

5 Cathedrals Measure 1999 s 8(3). During a vacancy of the see of the bishop who is the Visitor of the cathedral the provisions requiring consultation with the Visitor do not apply: s 8(3) proviso.

8. Further provisions of the constitution

The constitution of the cathedral must: (1) provide that the members of the Council¹, the Chapter² and the College of Canons³ are a body corporate with perpetual succession and a common seal⁴; (2) provide for the appointment of canons in Holy Orders⁵, the manner of their appointment and their tenure of office, whether freehold or for a term of years⁶; (3) contain provision enabling lay canons to be appointed⁷; (4) specify the maximum number of residentiary canons⁸ and non-residentiary canons⁹ of the cathedral¹⁰; (5) provide for the appointment of an administrator of the cathedral, having such functions as may be prescribed¹¹; (6) provide for the appointment of an architect¹² or surveyor of the fabric and an auditor for the cathedral¹³; (7) provide for the appointment of a person having the function of supervising music in the cathedral¹⁴; and (8) provide for the establishment of a finance committee of the Chapter having the function of advising the Chapter in connection with its responsibilities in the field of financial and investment management, and for the membership to include persons who have expertise and experience in that field¹⁵.

Where, immediately before the relevant date¹⁶, the constitution of a cathedral provided for the appointment of the dean to be by Her Majesty the constitution must continue to so provide¹⁷. In any other case, the constitution must provide that the incumbent of the benefice which comprises the parish of which the cathedral is the parish church is to be the dean¹⁸.

The constitution of each cathedral which is not a parish church must provide for the formation and maintenance of a roll containing the names of persons who are members of the cathedral community¹⁹ and apply to be enrolled as such²⁰.

The constitution may contain provision: (a) enabling or requiring a committee ('the Cathedral Community Committee') to be established, the membership consisting of persons whose names are on the roll²¹; (b) enabling or requiring committees to be established by the Chapter²²; and (c) for the delegation of functions to any committee²³.

Further provisions apply in the case of cathedrals in respect of which, immediately before the relevant date, there was no corporate body known as the dean and chapter²⁴.

1 As to the Council see PARA 610A.2.

2 As to the Chapter see PARA 610A.3.

3 As to the College of Canons see PARA 610A.4.

4 Cathedrals Measure 1999 s 9(1)(a).

5 For the meaning of 'canon' see PARA 610A.4 NOTE 5.

6 Cathedrals Measure 1999 s 9(1)(b). Such a provision of the constitution does not affect the provisions of the Priests (Ordination of Women) Measure 1993 s 4 (see PARA 657B): Cathedrals Measure 1999 s 9(4).

7 Ibid s 9(1)(c).

8 For the meaning of 'residentiary canon' see PARA 610A.1 NOTE 5. For provisions concerning residentiary canons see PARA 610A.7; as to canons generally see PARA 643 et seq.

9 For the meaning of 'non-residentiary canon' see PARA 610A.1 NOTE 7.

10 Cathedrals Measure 1999 s 9(1)(d).

11 Ibid s 9(1)(e). For the meaning of 'functions' see PARA 610A.2 NOTE 18. For the meaning of 'prescribed' see PARA 610A.2 NOTE 7.

12 'Architect' means a person registered under the Architects Act 1997: see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 220 et seq.

13 Cathedrals Measure 1999 s 9(1)(f) (amended by Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 7(1)(a)). The constitution of each cathedral must provide that the architect or surveyor of the fabric appointed by virtue of the 1999 Measure s 9(1)(f) must be an architect or surveyor having such qualifications and expertise in matters relating to the conservation of historic buildings and other matters as the Chapter, after consultation with the Cathedrals Fabric Commission and such other persons or bodies as it thinks fit, considers appropriate to enable the role and duties of the architect or surveyor of the fabric to be discharged: s 9(1A) (added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 7(1)(b)). Until the constitution of any cathedral has made provision as required by Sch 3 para 7(1), the Chapter must proceed as if the constitution of the cathedral had made such provision: 2005 Measure Sch 3 para 7(2).

14 Cathedrals Measure 1999 s 9(1)(g).

15 Ibid s 9(1)(h).

16 As to the relevant date see PARA 610A.1.

17 Cathedrals Measure 1999 s 9(2)(a).

18 Ibid s 9(2)(b). Any reference in the 1999 Measure to a cathedral which is a parish church is, in relation to a cathedral existing on 30 June 1999, to be construed as a reference to a cathedral in respect of which there was, immediately before the relevant date, no corporate body known as the dean and chapter: s 35(2).

19 As to the meaning of 'cathedral community' see PARA 610A.2 NOTE 10.

20 Cathedrals Measure 1999 s 9(3).

21 Ibid s 10(1)(a).

22 Ibid s 10(1)(b). Any such provision may provide that persons who are not members of the Chapter may be members of the committee: s 10(2).

23 Ibid s 10(1)(c).

24 See ibid s 12.

9. Statutes

The statutes of each cathedral must make provision for the good government of the cathedral and may, in particular¹: (1) provide for the creation, continuance, abolition, suspension or termination of suspension of any dignity, office or body in the cathedral and for the title by which any dignity or office is to be known²; (2) provide that any presentations or nominations to benefices³ in the patronage of the cathedral must be exercised by the Chapter or by a patronage committee of the Chapter⁴; (3) provide, where a cathedral is a parish church⁵, that part of that cathedral is to be the parish church or, where part of a cathedral is a parish church, that the cathedral or any other part thereof is to be the parish church⁶; and (4) provide for any incidental and supplementary matters⁷.

1 Cathedrals Measure 1999 s 11.

2 Ibid s 11(a).

3 As to benefices see PARA 689 et seq.

4 Cathedrals Measure 1999 s 11(b). As to the Chapter see PARA 610A.3.

5 As to parish churches see PARA 610A.8 NOTE 18.

6 Cathedrals Measure 1999 s 11(c).

7 Ibid s 11(d).

10. Revision of constitution and statutes

The Council¹ of any cathedral may, with the consent of the bishop², by instrument under the common seal of the cathedral³ revise the constitution or statutes of the cathedral⁴. Any instrument may either provide a new constitution or new statutes or may amend the constitution or statutes in force immediately before the instrument comes into force⁵.

Before taking any steps under the following provisions, the Council must afford the Chapter⁶ an opportunity to express views as to the Council's proposals for revision and must have regard to those views⁷.

In the case of a revision of the constitution, the Council must prepare a draft of the instrument and a notice⁸ of the preparation of the draft instrument setting out its objects and specifying the place in the diocese where copies may be inspected and stating that the Council will consider any written representations with respect to the instrument made before such date as may be specified⁹. The Council must also send a copy of the draft instrument to the Secretary-General of the General Synod¹⁰. After expiration of the period during which representations may be made, the Council, having considered any representations made, may, whether as a result of such representations or otherwise, amend the draft instrument as it thinks expedient¹¹.

In the case of a revision of the statutes, the Council must prepare a draft of the instrument and display in a prominent position in or in the vicinity of the cathedral a notice of its preparation setting out its objects and specifying the place in the diocese where copies may be inspected and stating that the Council will consider any written representations with respect to the draft instrument made before such date as may be so specified¹². After the expiration of the period during which representations may be made, the Council, having considered any representations made, may, whether as a result of such representations or otherwise, amend the draft instrument as it thinks expedient¹³.

After compliance with the above requirements, a copy of the draft instrument in question must be signed by the chairman of the Council on its behalf or, in the case of the absence or incapacity of its chairman, by two other members of the Council nominated by it for that purpose¹⁴. The signing of the copy of the draft instrument and the affixing of the common seal of the cathedral is conclusive evidence that the provisions¹⁵ relating to the preparation of the instrument have been complied with¹⁶. A copy of the instrument must be sent to the Secretary-General of the General Synod¹⁷.

An instrument¹⁸ which affects any right or interest of Her Majesty must not be made without the consent of Her Majesty¹⁹.

1 As to the Council see PARA 610A.2.

2 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

3 As to the common seal of the cathedral see PARA 610A.8 TEXT AND NOTE 4.

4 Cathedrals Measure 1999 s 28(1).

5 Ibid s 28(2).

6 As to the Chapter see PARA 610A.3.

7 Cathedrals Measure 1999 s 28(3).

8 The Council must publish the notice in one or more publications circulating in the diocese to the cathedral of which the draft instrument relates, and display the notice in a prominent position in or in the vicinity of the cathedral: *ibid* s 29(a), (b).

9 *Ibid* s 29(1). The date specified must be a date not less than four weeks after the date of the publication or displaying of the notice: s 29(1).

10 *Ibid* s 29(2).

11 *Ibid* s 29(3).

12 *Ibid* s 30(1). The date specified must be a date not less than four weeks after the date of the displaying of the notice: s 30(1).

13 *Ibid* s 30(2).

14 *Ibid* s 31(1).

15 *Ie* the provisions of *ibid* ss 28-32.

16 *Ibid* s 31(1).

17 *Ibid* s 31(2).

18 *Ie* an instrument under *ibid* ss 28-32.

19 *Ibid* s 32.

11. General duty

Any person or body on whom functions¹ are conferred by or under the Cathedrals Measure 1999 must, in exercising those functions, have due regard to the fact that the cathedral is the seat of the bishop² and a centre of worship and mission³.

1 For the meaning of 'functions' see PARA 610A.2 NOTE 18.

2 For the meaning of 'bishop' see PARA 610A.1 NOTE 1.

3 Cathedrals Measure 1999 s 1.

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(i) Introduction/611. The Cathedrals Measure 1963.

611. The Cathedrals Measure 1963.

The principal enactment dealing with cathedrals is the Cathedrals Measure 1963. This Measure, which replaced earlier legislation¹, does not (except for a few specified provisions) apply to Christ Church, Oxford²; but it applies to all other cathedral churches in England which existed on 31st July 1963³. In addition to re-establishing in amended form the machinery and procedure for revision of constitutions and statutes (including detailed specification of provisions whose inclusion in schemes is required or permitted⁴), the Measure contains provisions of general application relating to the property and financial affairs⁵ of cathedrals, together with a number of provisions concerning named cathedrals⁶.

1 In particular, it repealed and with new provisions the Cathedrals Measure 1931 (except ss 23, 29, 30) and the Cathedrals (Amendment) Measure 1934; it also repealed certain obsolete provisions relating to cathedral churches or to churches which were or had been collegiate churches: Cathedrals Measure 1963, long title; see also ss 46, 53, 54 (1), Schs. 1, 2

Transitional provisions were included in respect of existing schemes made under any previous enactment, and in respect of functions which at the passing of the Measure on 31st July 1963 were exercisable in relation to property by the capitular body of a cathedral: see s 54 (1), (2). It was declared that no provision of the Measure or of any scheme made under it should adversely affect the tenure of office or any right or pension of any person who, at the passing of the Measure on 31st July 1963, held or had a freehold or other office conferring fixity of tenure in any cathedral unless, by an instrument in writing under his hand, he agreed to be bound by that provision: s 50.

2 Ibid s 55. The provisions which apply to Christ Church, Oxford, are ss 42, 43 (see note 6 infra); s 52 (interpretation); s 54 (repeals and transitional provisions): s 55 proviso (a). In the event of an additional canon being appointed under s 42, certain other provisions of the Measure will apply in relation to that canon: ss 42 (4), 55 proviso (b).

3 Ibid s 55. Thus 'cathedral church' means any cathedral church in England existing on 31st July 1963 except Christ Church, Oxford: s 52 (1). For the meaning of 'England', see the Interpretation Measure 1925, s 2, and PARA 345 ante.

4 See PARA 610 ante, 612 et seq post.

5 See PARA 626 et seq post.

6 See the Cathedrals Measure 1963, s 39 (capitular revenues of Birmingham Cathedral); s 40 (provisions as to Newcastle Cathedral Endowment Fund); s 41 (provisions as to the canonry annexed to the archdeaconry of Norfolk); s 42 (provision for the appointment of an additional canon at Christ Church, Oxford); s 43 (Bishop of Oxford's power to appoint non-residentiary canons); s 44 (provisions as to Southwark Cathedral); s 54 (4) (saving the Bishop of Manchester's power to assign additional duties to a canon of Manchester Cathedral).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

611 The Cathedrals Measure 1963

TEXT AND NOTES--Cathedrals Measure 1963 ss 1-5, 36 repealed: Cathedrals Measure 1976 s 8(2). For provisions relating to the revision of constitutions and statutes of cathedral churches, see now the Cathedrals Measure 1976.

NOTE 1--1931 Measure now repealed in full: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 6--1963 Measure s 39 amended: Church of England (Miscellaneous Provisions) Measure 2000 s 6. 1963 Measure s 43 amended: Church of England (Miscellaneous Provisions) Measure 1978 s 10. 1963 Measure ss 40-42, 44 amended with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(1), Sch 2 para 3.

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(ii) Cathedral Schemes

A. THE MAKING OF CATHEDRAL SCHEMES

612. The Cathedrals Commission.

For the purpose of securing the revision of the constitutions and statutes of cathedral churches¹, the Standing Committee of the Church Assembly² was required to appoint a commission to be known as the Cathedrals Commission³. The functions which the commission was required to exercise were to prepare forthwith a scheme for each of the cathedrals concerned⁴, bringing its constitution and statutes into conformity with the provisions of the Cathedrals Measure 1963⁵; to prepare, upon application, a scheme for including in the constitution and statutes any of the optional provisions specified by that Measure⁶; and such other functions as the Measure conferred on the commission⁷. The commission's functions were to cease on 31st July 1966⁸, but in the event of a subsequent application on behalf of any cathedral for a scheme revising its constitution and statutes, the Standing Committee of the Church Assembly or General Synod⁹ was empowered to authorise the appointment of a special commission, charged with the preparation of a scheme in accordance with the Measure and with the exercise of other functions conferred on it by the Measure¹⁰.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 As from 4th November 1970 the reference to the Church Assembly is to be construed as a reference to the General Synod of the Church of England: see PARA 385 ante.

3 Cathedrals Measure 1963, s 1 (1). The commission was in effect the successor to the Cathedral Commissioners established under the Cathedrals Measures 1931, who between 1935 and 1942 submitted schemes (confirmed in due course by Order in Council) in respect of all the cathedrals except Christ Church, Oxford. The task assigned to the new commission by the Cathedrals Measure 1963 was thus one of further revision of constitutions and statutes; but it could take the form either of providing new constitutions and statutes or of amending those already existing: s 5 (2).

4 See PARA 611 ante.

5 Cathedrals Measure 1963, s 1 (1) (a). Inclusion in the constitution and statutes of certain specified provisions was made obligatory: see PARA 616 et seq post.

6 Ibid s 1 (1) (b). As to these optional provisions, see PARA 622 et seq post.

7 Ibid s 1 (1) (c).

8 Ie on the expiration of the period of three years from the passing of the Measure: ibid s 1 (2). This provision does not, however, affect the functions of the commission in relation to pending schemes and applications: s 1 (2).

9 See note 2 supra. As to the Standing Committee of the General Synod, see PARA 392 ante.

10 Cathedrals Measure 1963, s 1 (3). The Cathedrals Commission or a special commission must in due course report to the Standing Committee as to the completion of its functions or, where agreement cannot be reached or it does not desire to proceed, apply for discharge: s 1 (4), (5). In the Measure (apart from s 1) 'the commission' includes the Cathedrals Commission and a special commission: ss 1 (6), 52 (1). Thus the expenses of a special commission may be paid, in whole or part, by the Church Commissioners at their discretion: s 36.

UPDATE**610-625 Constitution of Cathedrals**

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

612 The Cathedrals Commission

TEXT AND NOTE 3--The Cathedrals Commission is replaced by the Cathedrals Statutes Commission: Cathedrals Measure 1976 s 1(1). 1931 Measure repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTES 4-10--Replaced. The commission's function is to prepare, where an application in that behalf is made to it by the consenting body of any cathedral church, a scheme for revising the cathedral's constitution and statutes: Cathedrals Measure 1976 s 1(2). The Church Commissioners may at their discretion defray out of their general fund all or part of the commission's expenses: s 6.

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613. Consenting bodies.

Before preparing a draft scheme the Cathedrals Commission¹ had to consult with the consenting body of the cathedral church². For this purpose the consenting body will normally be, in the case of a dean and chapter cathedral, its administrative chapter, or, if it has no administrative chapter, its general chapter; and, in the case of a parish church cathedral, its cathedral council³. Any application for the inclusion in the constitution and statutes of any of the specified optional provisions⁴ had to be made in pursuance of a resolution of the consenting body⁵. So far as practicable the consenting body had to give notice of the proposals contained in the draft scheme to every person connected with the cathedral who appeared to be affected by it, with an intimation that any representations made within two months after he received the notice would be considered by the commission⁶.

1 For the meaning of 'Cathedrals Commission', see PARA 612 note 10 ante.

2 Cathedrals Measure 1963, s 2 (1).

3 Ibid s 2 (4). A scheme under the Measure might, however, provide that a body other than one here specified is to be the consenting body (s. 2 (4) proviso), but such an alternative consenting body could presumably operate only in the case of a second or subsequent scheme under the Measure in relation to the cathedral concerned (see s 5 (3), and PARA 615 post). In the absence of an administrative chapter, general chapter or cathedral council constituted by virtue of a scheme under the Measure (see PARAS 618, 619 post), it seems that recourse must be had to the corresponding bodies which were constituted under the repealed provisions of the Cathedrals Measure 1931. As to transitional provisions, see the Cathedrals Measure 1963, s 54 (2), and PARA 611 note 1 ante.

4 See PARA 622 post.

5 Cathedrals Measure 1963, s 2 (1).

6 Ibid s 2 (2).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

613 Consenting bodies

TEXT AND NOTES--For 'Cathedrals Commission' read now 'Cathedrals Statutes Commission'.

NOTE 2--See now Cathedrals Measure 1976 s 2(1).

NOTE 3--See now *ibid* s 1(3), which replaces Cathedrals Measure 1963 s 2(4). 1931 Measure now repealed in full: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTES 4-6--Repealed: Cathedrals Measure 1976.

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614. Preparation of schemes.

The Cathedrals Commission¹ must submit any draft scheme prepared by it to the bishop², the Church Commissioners and, so far as is practicable, any other person to whom the commission considers it should be submitted in order to ensure that all persons affected are informed of the proposals³. A copy of all representations duly made must be sent to all persons to whom the draft scheme has been so submitted or to whom notice of the proposals was previously given⁴, and such persons are allowed one month within which to make representations with respect to them to the commission⁵. After considering any representations duly made and making any such amendments as it may think expedient, the commission must submit the draft scheme to the bishop and the consenting body for their consents⁶, upon obtaining which the commission must lay the draft scheme before the General Synod⁷, and, unless before the end of the same session the synod passes a resolution to the contrary, the commission must seal the scheme⁸.

1 For the meaning of 'Cathedrals Commission', see PARA 612 note 10 ante.

2 In relation to a cathedral church 'bishop' means the bishop of the diocese in which that cathedral church is situated: Cathedrals Measure 1963, s 52 (1).

3 Ibid s 3 (1). It must be accompanied by a statement that any representations made within two months from the submission of the scheme will be considered by the commission: s 3 (1). A notice of the preparation of the draft scheme must be published in at least one newspaper circulating in the district, giving an opportunity for inspection of copies and for the submission of representations: s 3 (2).

4 See PARA 613 text to note 6 ante.

5 See the Cathedrals Measure 1963, s 3 (3).

6 Ibid s 3 (4), (5). As to the consenting body, see PARA 613 ante. A copy must also be sent to the Church Commissioners: s 3 (5).

7 Ibid s 3 (6); Synodical Government Measure 1969, s 2 (2).

8 Cathedrals Measure 1963, s 3 (6) (b). If the General Synod, by resolution passed in that session, directs the commission not to seal the draft scheme, no further proceedings are to be taken in relation to it, but without prejudice to the preparation of a new draft scheme: s 3 (6) (a); Synodical Government Measure 1969, s 2 (2). The sealing of the scheme in accordance with the procedure laid down in the Cathedrals Measure 1963, s 3 (6) is conclusive evidence that the foregoing requirements relating to the preparation of the scheme have been complied with: s 3 (6).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

614 Preparation of scheme

TEXT AND NOTE 1--The Cathedrals Commission is replaced by the Cathedrals Statutes Commission: Cathedrals Measure 1976 s 1(1).

TEXT AND NOTE 3--See now *ibid* s 2(2), (3). It must be accompanied by a statement that any representations made before a specified date not less than six weeks after the submission of the draft scheme will be considered by the commission: s 2(2).

TEXT AND NOTES 4, 5--Replaced. A copy of all representations duly made must be sent to the bishop, the consenting body, the Church Commissioners and any other person who appears to the commission to be affected by them, together with a statement that the commission will consider any representation made to it before a specified date not less than three weeks after the dispatch of the copy: *ibid* s 2(4).

NOTE 6--See now *ibid* s 2(5), (6).

NOTE 7--See now *ibid* s 2(7).

TEXT AND NOTE 8--The scheme must be signed by the chairman of the Commission or by two other members nominated by the Commission for that purpose: *ibid* s 2(8).

NOTE 8--See now *ibid* s 2(7)(a), (b), (8).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/A. THE MAKING OF CATHEDRAL SCHEMES/615. Approval of schemes.

615. Approval of schemes.

After a scheme is sealed¹ the Cathedrals Commission² must submit it for the approval of the Queen in Council³. A person who has made representations to the commission⁴ may appeal against the scheme or any part of it to the Queen in Council⁵, who may order that the appeal be heard by the Judicial Committee of the Privy Council⁶. Upon receipt of the Judicial Committee's report, the Queen in Council may allow the appeal, in which case, without prejudice to the preparation of a new scheme, no further proceedings may be taken in relation to the scheme⁷, or may dismiss it⁸, or may refer the scheme back to the commission for further consideration⁹. On a reference back the commission may, after introducing (with the consent of the bishop and the consenting body) such amendments as it considers expedient, reseal the scheme, and the foregoing provisions relating to schemes sealed by the commission thereupon become applicable to the amended scheme¹⁰; or the commission may withdraw the scheme¹¹.

A scheme prepared under the foregoing provisions must be laid before each House of Parliament¹² as if it were a draft statutory instrument under an Act¹³, and, if no resolution is passed that the scheme should not be made, the Queen may confirm it by Order in Council¹⁴.

In the years following the passing of the Cathedrals Measure 1963 schemes relating to all cathedrals in England were confirmed by Orders in Council¹⁵.

Any scheme prepared and confirmed under the foregoing provisions may be varied or revoked by a subsequent scheme prepared and confirmed in like manner¹⁶.

1 As to the sealing of schemes, see PARA 614 ante.

2 For the meaning of 'Cathedrals Commission', see PARA 612 note 10 ante.

3 Cathedrals Measure 1963, s 3 (7). The commission must notify the consenting body (see PARA 613 ante), the bishop as defined in PARA 614 note 2 ante (unless the see is vacant (s. 3 (7) proviso)), the Church Commissioners and any person who has made representations to the commission (see PARA 614 ante) that the scheme has been so submitted (s. 3 (7) (a)), and must publish a notice to the same effect in the London Gazette, stating where a copy of the scheme may be obtained (s. 3 (7) (b), (12)). A scheme which affects any right of patronage or other right or interest of the Queen may not be so submitted except with her consent: s 48.

4 See PARA 614 ante.

5 Cathedrals Measure 1963, s 3 (8). The appeal must be lodged within one month from the publication of the notice in the London Gazette (see note 3 supra) or within any extended period granted by the Privy Council (s. 3 (8) proviso). The costs and expenses of the appellant may be paid, in part or whole, by the Church Commissioners out of their general fund at their discretion: s 37. As to this fund, see PARA 376 ante.

6 Ibid s 3 (9).

7 Ibid s 3 (9) (a).

8 Ibid s 3 (9) (b).

9 Ibid s 3 (9) (c).

10 Ibid s 3 (9) (c) (i).

11 Ibid s 3 (9) (c) (ii).

12 Ibid s 3 (10). The stage at which this should be done is (1) where no representations have been made, on the publication of the notice under s 3 (7) (b) (see note 3 supra) (s. 3 (10) (a)); (2) where an appeal is not brought within the period specified in s 3 (8) by any person who has made representations, on the expiration of that period (s. 3 (10) (b)); or (3) where such an appeal is dismissed, on the dismissal of the appeal (s. 3 (10) (c)).

13 If the procedure followed is that under the Statutory Instruments Act 1946, ss 6, 7 (see STATUTES vol 44(1) (Reissue) PARA 1517); Cathedrals Measure 1963, s 3 (10).

14 Ibid s 3 (11). Notice of every scheme so confirmed must be published in the London Gazette, stating where a copy of the scheme may be obtained: s 3 (11), (12). The Order in Council confirming a scheme may vary or revoke any Order in Council made under any Act or Measure insofar as it affects the organisation, property or revenues of a cathedral church (s. 5 (4)), although any payments required to be made by the Church Commissioners may not be so varied without their consent (s. 5 (4) proviso).

15 See Orders in Council dated 10th March 1966 (Canterbury (amending a scheme confirmed by Order in Council dated 9th February 1942 under the Cathedrals Measure 1931 (repealed)), Durham), 22nd June 1966 (Peterborough), 28th July 1966 (Norwich, Worcester), 22nd November 1966 (Portsmouth), 21st December 1966 (Hereford, Newcastle, Wakefield), 10th February 1967 (Southwell, Truro), 24th May 1967 (Bradford, Bury St Edmunds, Leicester, Lichfield), 28th July 1967 (Birmingham, Blackburn, Bristol, Chester, Derby, Exeter, Wells, Winchester), 20th December 1967 (Rochester, Sheffield), 28th December 1967 (Coventry), 14th February 1968 (Carlisle, Guildford, Lincoln), 8th May 1968 (Gloucester), 7th June 1968 (Manchester, St Albans, York), 1st July 1968 (St Paul's), 12th July 1968 (Chelmsford, Ripon, Southwark), and 26th July 1968 (Chichester, Ely, Liverpool, Salisbury).

The following are parish church cathedrals: Birmingham, Blackburn, Bradford, Bury St Edmunds, Chelmsford, Coventry, Derby, Leicester, Newcastle, Portsmouth, Sheffield, Southwark, Southwell and Wakefield. The rest are dean and chapter cathedrals.

16 Cathedrals Measure 1963, s 5 (3).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

615 Approval of schemes

TEXT AND NOTES 1-4--Replaced. As soon as possible after a scheme is made (see PARA 614) the Cathedral Statutes Commission (see PARA 612) must submit it for the approval of the Queen in Council: Cathedrals Measure 1976 s 3(1). The commission must notify the consenting body, the bishop (unless the see is vacant), the Church Commissioners and any other person who has made representations to the commission that the scheme has been so submitted and that there is, on obtaining the leave of the Judicial Committee of the Privy Council, a right of appeal to the Queen in Council, specifying a date determined by the commission, being a date not less than 28 days after the service of the notice, on or before which an application for leave must be made: s 3(1); Church of England (Miscellaneous Provisions) Measure 1992 s 9(2)(a). When submitting a scheme for confirmation by the Queen in Council the commission must inform the Clerk of the Privy Council of the date to be specified in notices relating to the scheme: 1976 Measure s 3(1); 1992 Measure s 9(2)(a). A scheme which affects any right of patronage or other right or interest of the Queen may not be so submitted except with her consent: Cathedrals Measure 1963 s 48.

A person who has made representations to the commission (see PARA 614) may appeal against the scheme or any part of it to the Queen in Council: 1976 Measure s 3(2). An appeal may only be made with leave of the Judicial Committee of the Privy Council: s 3(2); 1992 Measure s 9(2)(b). The costs and expenses of the appellant may be paid, in whole or in part, by the Church Commissioners out of their general fund (see PARA 376) at their discretion: 1963 Measure s 37. As to the commission's expenses, see PARA 612. If leave to appeal is granted and a petition of appeal is lodged in time, the Judicial Committee of the Privy Council must hear the appeal and make a report on it: 1976 Measure s 3(4); 1992 Measure s 9(2)(d). On receipt of the report the Queen in Council may (1) allow the appeal, in which case, without prejudice to the preparation of a new scheme, the scheme is to be of no effect; (2) dismiss the appeal and confirm the scheme; or (3) return the scheme to the commission for reconsideration: s 3(4). In the latter event the commission may either withdraw the scheme or amend it with the agreement of the bishop and the consenting body and sign the scheme, whereupon the foregoing provisions relating to schemes signed by the commission become applicable to the amended scheme: 1976 Measure s 3(5).

If (a) no application for leave to appeal is made on or before a specified date (ie the date specified in the notices under s 3(1)); or (b) the Judicial Committee refuses to grant leave; or (c) an appellant, having been granted leave to appeal, fails to lodge his petition of appeal within three months from the date leave was granted or such extended period as the Registrar of the Privy Council may allow, the Queen may confirm the scheme by Order in Council: s 3(3); 1992 Measure s 9(2)(c). Any Order in Council confirming a scheme may revoke any Order in Council confirming a scheme under the 1963 Measure s 3, or the 1976 Measure s 5(3), and may vary or revoke any Order in Council made under any Act or Measure in so far as it affects the organisation, property or revenues of a cathedral church, although any payments required to be made by the Church Commissioners may not be so varied without their consent: s 5(4). These Orders in Council are not statutory instruments: s 4(3).

The commission must send a copy of every Order in Council to the diocesan registrar for filing in the diocesan registry: s 4(2); 1992 Measure s 9(3). Except in so far as a scheme or any provision in it is expressed to come into operation on a specified date, event or contingency it comes into operation on the date on which the Order in Council is made: 1976 Measure s 5(1); 1992 Measure s 9(4).

TEXT AND NOTE 16--See now 1976 Measure s 5(2).

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B. THE CONTENT OF CATHEDRAL SCHEMES

616. Revision of constitutions and statutes.

The expressed purpose of the foregoing provisions concerning the making of schemes is to secure the revision of the constitutions and statutes of cathedral churches¹. Any scheme prepared under those provisions may either provide a new constitution and new statutes or may amend those already existing². The Cathedrals Measure 1963 specified certain obligatory provisions (namely provisions which are required to be included in the constitution and statutes)³ and certain optional provisions (namely provisions which may be so included if application is made for that to be done)⁴. A scheme may contain both such provisions as are necessary to bring the cathedral's constitution and statutes into conformity with the provisions of the Measure and any of the optional provisions for which application has been made⁵. A scheme may be varied or revoked by a subsequent scheme⁶.

1 Cathedrals Measure 1963, s 1 (1): see PARA 612 ante.

2 Ibid s 5 (2).

3 See ibid ss 6-10, and PARAS 617-621 post.

4 See ibid ss 11-13, and PARA 622 post.

5 Ibid s 5 (1).

6 Ibid s 5 (3): see PARA 615 ante.

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

616 Revision of constitutions and statutes

TEXT AND NOTES--Cathedrals Measure 1963 ss 1-5 replaced by Cathedrals Measure 1976.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/617. Relationship of bishops to cathedral churches.

617. Relationship of bishops to cathedral churches.

The constitution and statutes of each cathedral church¹ must provide that the bishop² shall be the visitor of the cathedral church and must provide for the exercise by him of his functions³ as visitor⁴; and they must specify the occasions on which, and the conditions subject to which, the bishop is to have the right to officiate in or use the cathedral church⁵.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 For the meaning of 'bishop', see PARA 614 note 2 ante.

3 'Functions' includes powers and duties: Cathedrals Measure 1963, s 52 (1).

4 Ibid s 6 (a). As to visitations, see PARAS 490, 491 ante.

5 Ibid s 6 (b).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

617 Relationship of bishops to cathedral churches

TEXT--This provision does not, however, require the statutes to provide for periodical episcopal visitations of the cathedral church, and notwithstanding any provision to the contrary it is not obligatory for a bishop to visit the cathedral church of his diocese at regular intervals: Church of England (Miscellaneous Provisions) Measure 1976 s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/618. Governing bodies of dean and chapter cathedrals.

618. Governing bodies of dean and chapter cathedrals.

The constitution and statutes of each dean and chapter cathedral¹ must provide for the continuance or establishment of a general chapter consisting of the dean and all the canons, whether residentiary or not², and for the performance of administrative functions³ in relation to the cathedral church either (1) by an administrative chapter⁴, or (2) by the general chapter with provision for delegation to an administrative committee⁵. The constitution and statutes must also provide for the appointment, if the dean and chapter think it desirable, of a committee to perform delegated functions in relation to the administration of the finances and property⁶ of the cathedral church⁷.

1 'Dean and chapter cathedral' means a cathedral church (defined in PARA 611 note 3 ante) in respect of which there is a corporate body known as the dean and chapter: Cathedrals Measure 1963, s 52 (1); see also PARA 638 et seq post.

2 Ibid s 7 (a). As to deans, see PARA 640 et seq post, and as to canons, see PARA 643 et seq post. 'Canon' includes a non-residentiary canon or prebendary, but not a minor canon or any person not in holy orders, and 'residentiary canon' includes a stipendiary canon: s 52 (1).

3 For the meaning of 'functions', see PARA 617 note 3 ante. The body performing administrative functions is called the 'administrative body': ibid s 52 (1). The constitution and statutes may authorise the administrative body to appoint a committee to exercise delegated functions: see PARA 622 post.

4 Ibid s 7 (b) (i). Any such administrative chapter is to consist of the dean and residentiary canons and such other members of the general chapter, if any, as may be specified in the constitution and statutes: s 7 (b) (i). See also s 14 (2) proviso, and note 5 infra.

5 Ibid s 7 (b) (ii). Any such administrative committee is to consist of such members of the general chapter as may be specified in the constitution and statutes: s 7 (b) (ii). In the event of a parish church cathedral becoming a dean and chapter cathedral provision may be made for the appointment of lay persons as additional members of the administrative chapter or administrative committee for purposes connected with finance and property: see s 14 (2) proviso, and PARA 625 post. For the meaning of 'property', see note 6 infra.

6 'Property' includes a thing in action and any interest in real or personal property: ibid s 52 (1).

UPDATE

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/619. Governing bodies of parish church cathedrals.

619. Governing bodies of parish church cathedrals.

The constitution and statutes of each parish church cathedral¹ must provide for the continuance of a cathedral chapter of which the provost, the canons of the cathedral church and the archdeacons of the diocese must be members, and of which the bishop may be a member for such purposes as may be specified in the constitution and statutes².

The constitution and statutes must provide for the performance of administrative functions³ in relation to the cathedral church by a cathedral council⁴, by an administrative chapter⁵ or by the cathedral chapter which must delegate such of its functions as it determines to an administrative committee⁶.

1 'Parish church cathedral' means any cathedral church (as defined in PARA 611 note 3 ante) other than a dean and chapter cathedral: Cathedrals Measure 1963, s 52 (1); cf. para 618 note 1 ante.

2 Ibid s 8 (a). As to provosts, see PARA 640 et seq post; as to canons, see PARA 643 et seq post; as to archdeacons, see PARA 496 et seq ante; and for the meaning of 'bishop', see PARA 614 note 2 ante.

3 For the meaning of 'functions', see PARA 617 note 3 ante. The body performing administrative functions is called the 'administrative body': ibid s 52 (1). The constitution and statutes may authorise the administrative body to appoint a committee to exercise delegated functions: see PARAS 622, 623 post.

4 Ibid s 8 (b) (i). A cathedral council must consist of the provost (who acts as chairman), the residentiary canons, and other persons specified in the constitution and statutes, being nonresidentiary canons, archdeacons or other persons holding office in connection with the cathedral, representatives of the parochial church council (see PARA 568 et seq ante) or the parochial church meeting (see PARA 563 et seq ante) of the parish in which the cathedral is situated, persons resident in the diocese or persons whose names are on the church electoral roll (see PARA 591 et seq ante) of a parish in the diocese: s 8 (b) (i). The constitution and statutes may provide that any functions of the cathedral council relating to the duties of the provost and canons and to the ordering of services are to be exercised by such members of the council as are clerks in holy orders: s 11 (2) (m).

5 Ibid s 8 (b) (ii). An administrative chapter must consist of the provost (who acts as chairman), the residentiary canons and such non-residentiary canons or archdeacons as may be specified in the constitution and statutes: s 8 (b) (ii). Provision must be made for the appointment of lay persons as additional members for the purpose of considering any question relating to the cathedral's finances and property (s. 8 (c) (i)), or for the appointment of a committee, consisting of members of the administrative chapter and specified lay persons, to perform delegated functions relating to the cathedral's finances and property (s. 8 (c) (ii)). For the meaning of 'property', see PARA 618 note 6 ante.

6 Ibid s 8 (b) (iii). The composition of the administrative committee to which functions of the cathedral chapter are delegated is to be the same as that prescribed (see note 5 supra) for the administrative chapter: s 8 (b) (iii). Provision must be made for the appointment of lay persons as additional members of the administrative committee for the purpose of considering any question relating to the cathedral's finances and property (s. 8 (d) (i)), or for the appointment of a committee, consisting of members of the administrative committee and specified lay persons to perform delegated functions relating to the cathedral's finances and property (s. 8 (d) (iii)).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the

Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

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620. Canons engaged exclusively upon cathedral duties.

The constitution and statutes of each cathedral church¹ must provide that the holders of two residentiary canonries² shall be engaged exclusively on cathedral duties³. 'Cathedral duties' means⁴ duties in connection with the cathedral church or pastoral duties in the diocese which should, in the opinion of the administrative body⁵ of the cathedral, be discharged from the cathedral as the mother church of the diocese, but excluding, subject to certain exceptions⁶, duties performed by any person as a suffragan bishop⁷, as an assistant bishop⁸, as an archdeacon⁹, as a director or officer of a diocesan board of education¹⁰ or as an officer of a diocesan board of finance¹¹ or diocesan parsonages board¹², or as the holder of any office to which he was appointed by a person or body other than the administrative body of the cathedral and for which a salary or stipend is normally paid¹³. The foregoing provisions are not to be regarded as limiting the number of residentiary canons engaged exclusively on cathedral duties¹⁴.

Any question which arises whether a person is engaged exclusively on cathedral duties or as to the amount of time spent on other duties, must be determined by the Church Commissioners, after consultation with the visitor (unless the see is vacant¹⁵) and the administrative body, and any person who is dissatisfied with the commissioners' decision, may appeal to the archbishop whose decision is final¹⁶.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 For the meaning of 'residentiary canon', see PARA 618 note 2 ante.

3 Cathedrals Measure 1963, s 9 (1). A provision may, however, be included whereby, during an initial period to be determined by the bishop after consultation with the administrative body of the cathedral, only one residentiary canon need be engaged exclusively on cathedral duties: s 9 (1) proviso. For the meaning of 'bishop', see PARA 614 note 2 ante.

4 The definition here set out is applied by the Cathedrals Measure 1963, s 52 (1).

5 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

6 Thus the administrative body, the visitor and the Church Commissioners acting jointly may direct that a residentiary canon be treated for this purpose as engaged exclusively on cathedral duties notwithstanding that he is also an assistant bishop or the holder of one of the offices specified in the text to note 13 infra (Cathedrals Measure 1963, s 9 (2) proviso (i)); and the archbishop of the province and the Church Commissioners may jointly in special circumstances direct that a residentiary canon who is normally engaged exclusively on cathedral duties is, for a specified period, to be treated as so engaged for this purpose notwithstanding that he is performing other duties (s. 9 (2) proviso (ii)).

7 Ibid s 9 (2) (a).

8 Ibid s 9 (2) (b).

9 Ibid s 9 (2) (c).

10 Ibid s 9 (2) (d). This must, it seems, be interpreted as a reference to a diocesan education committee, as to which see PARA 522 ante.

11 Ibid s 9 (2) (d). As to this board, see PARAS 517, 518 ante. 1

12 Ibid s 9 (2) (d); Repair of Benefice Buildings Measure 1972, s 29. As to this board, see PARA 520 ante.

13 Cathedrals Measure 1963, s 9 (2) (e).

14 Ibid s 9 (3).

15 Ibid s 47 proviso.

16 Ibid s 47.

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

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621. Other obligatory provisions.

The constitution and statutes of each cathedral church¹ must (1) provide for the appointment of any dean by the Queen, and, in the case of a parish church cathedral², for the appointment as provost of the incumbent of the benefice of which the cathedral is the parish church³; (2) provide for the appointment of canons, specifying the manner of their appointment⁴ and the maximum numbers of both residentiary and non-residentiary canons⁵, (3) confer power to pay stipends or other emoluments to the dean or provost and to the residentiary canons out of the capitular revenues of the cathedral⁶, and must provide that, in determining the amount of a residentiary canon's stipend, regard may be had to any emoluments payable to him in respect of any other office or appointment and the extent to which his availability for cathedral duties is thereby materially affected⁷; (4) provide that any presentations or nominations to benefices in the patronage of the capitular body⁸ is to be exercised, in the case of a dean and chapter cathedral, by the dean and chapter or a patronage committee of it and, in the case of a parish church cathedral, by the cathedral chapter or the administrative chapter or by a patronage committee of the cathedral chapter⁹; (5) provide that all functions of the capitular body in relation to property¹⁰ are to be delegated to the administrative body¹¹; (6) provide that the capitular body shall have a common seal, to be kept in the custody of the administrative body, which must be empowered to affix it to any document¹²; and (7) provide for the appointment of an architect¹³ to the cathedral¹⁴.

In the case of a parish church cathedral, the constitution and statutes must also provide for the abolition of the jurisdiction of the archdeacon and rural dean over the parish of the cathedral church, and for the exercise of any of their former functions by the administrative body¹⁵; for the abolition of any jurisdiction of the consistory court over the cathedral church or any part of it¹⁶; and for conferring on a specified body, subject to any specified limitations or conditions, powers similar to those which, in a dean and chapter cathedral, are exercisable by the dean and chapter with respect to the fabric, monuments and ornaments of the cathedral and with respect to its churchyard¹⁷.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

3 Cathedrals Measure 1963, s 10 (1) (a), (b): see PARA 641 post.

4 Ibid s 10 (1) (c).

5 Ibid s 10 (1) (f). For the meaning of 'residentiary canon', see PARA 618 note 2 ante.

6 Ibid s 10 (1) (d). The amounts are subject to the consent of the Church Commissioners: s 10 (1) (d). See also ss 28-30, 31, and PARA 631 post.

7 Ibid s 10 (1) (e). For the meaning of 'cathedral duties', see PARA 620 ante. Any question which arises as to the amount of time spent on duties other than cathedral duties is to be determined in the manner prescribed by s 47: see PARA 620, text to notes 15, 16 ante.

8 For the meaning of 'capitular body', see PARA 610 note 6 ante.

9 Cathedrals Measure 1963, s 10 (1) (g). As to these bodies, see PARAS 618, 619 ante.

10 For the meaning of 'property', see PARA 618 note 6 ante.

11 Cathedrals Measure 1963, s 10 (1) (h). For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

12 Ibid s 10 (1) (i), (j).

13 The architect must be a person registered under the Architects (Registration) Acts 1931 to 1969: Cathedrals Measure 1963, s 52 (1); Architects Registration Amendment Act 1969, s 4 (2).

14 Cathedrals Measure 1963, s 10 (1) (k).

15 Ibid s 10 (2) (a).

16 Ibid s 10 (2) (b).

17 Ibid s 10 (2) (c).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

621 Other obligatory provisions

NOTES 4, 5--As to the appointment of lay canons in the Cathedral Church of Christ Church, Oxford see the Church of England (Miscellaneous Provisions) Measure 1995 s 2.

NOTE 11--In certain conditions the Chapel will need to acquire the approval of the Cathedrals Fabric Commission in relation to property: Care of Cathedrals Measure 1990 s 2 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 1); Care of Cathedrals Rules 1990, SI 1990/2335. See PARA 633A.

NOTE 13--The Cathedrals Fabric Commission must be consulted before a cathedral architect or surveyor of the fabric is appointed: Care of Cathedrals Measure 1990 s 12(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 12(1)). In certain cases a cathedral archaeologist is to be appointed: Care of Cathedrals Measure 1990 s 12(2) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 12(2)). See PARA 633A. Architects (Registration) Acts 1931 and 1938 consolidated: Architects Act 1997.

NOTES 16, 17--The provisions in the Care of Cathedrals Measure 1990 concerning the fabric etc, of a parish church cathedral should be noted as, if an order is made under s 18(1) (repealed) of the 1990 Measure, the Cathedrals Measure 1963 s 10(2)(b) will not apply. See PARA 633A.

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622. Optional provisions.

In addition to the matters for which provisions must be made by the constitution and statutes of each cathedral church¹ the Cathedrals Measure 1963 specifies other matters in respect of which provision may be so made. In general, the constitution and statutes may make provision for the good government of the cathedral². In particular, they may (1) constitute any body or create any office for the purpose of the performance of functions³ in relation to the cathedral⁴, and provide for the appointment and terms of service of persons holding office in the cathedral or employed in connection with it⁵; (2) provide for the regulation and superintendence of the services, fabric, fittings, ornaments, furniture and monuments of the cathedral⁶; (3) provide for the administration of all property⁷ and revenues of, or held in connection with, the cathedral, including any trust fund applicable to a special purpose⁸; (4) provide for the abolition, suspension or termination of suspension of any dignity, office or body in the cathedral⁹; and (5) provide for any incidental and supplementary matters for which the Cathedrals Commission thinks it expedient to provide¹⁰.

The Measure specified a number of other matters for which provision may be made in the constitution and statutes¹¹. These include the appointment by the administrative body¹², from among its own members, of a committee to exercise delegated functions¹³; various matters relating to canons and their tenure of office¹⁴; the establishment of a college of lay canons with specified functions¹⁵; the payment of pensions to retired laymen who were employed in connection with the cathedral, and to their widows and dependants¹⁶; matters relating to the constitution of a cathedral or part of it as a parish church¹⁷; conferment by the bishop¹⁸ of the designation of dean emeritus, provost emeritus or prebendary emeritus upon any person who retires immediately after holding the appropriate office¹⁹; and the assignment of part of the capitular revenues or property of the cathedral for the promotion of the study of theology or any other branch of sacred learning, sacred music or ecclesiastical art²⁰.

1 See PARAS 617-621 ante. For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 Cathedrals Measure 1963, s 11 (1).

3 For the meaning of 'functions', see PARA 617 note 3 ante.

4 Cathedrals Measure 1963, s 11 (1) (a). They may specify the functions of that body or the person holding that office in relation to the cathedral and, where applicable, the diocese: s 11 (1) (b).

5 Ibid s 11 (1) (c).

6 Ibid s 11 (1) (d); see also s 10 (2) (c), and PARA 621 ante.

7 For the meaning of 'property', see PARA 618 note 6 ante.

8 Cathedrals Measure 1963, s 11 (1) (e).

9 Ibid s 11 (1) (f).

10 Ibid s 11 (1) (g). For the meaning of 'Cathedrals Commission', see PARA 612 note 10 ante.

11 Ibid s 11 (2). These are expressed to be without prejudice to the generality of those specified in s 11 (1). For other optional provisions, see PARA 619 note 4 ante, 623, 624 post.

12 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

- 13 Cathedrals Measure 1963, s 11 (2) (a).
- 14 See *ibid* s 11 (2) (b)-(g), and PARAS 643-645 post. For the meaning of 'canon', see PARA 618 note 2 ante.
- 15 *Ibid* s 11 (2) (j).
- 16 *Ibid* s 11 (2) (h).
- 17 *Ibid* s 11 (2) (i).
- 18 For the meaning of 'bishop', see PARA 614 note 2 ante.
- 19 Cathedrals Measure 1963, s 11 (2) (k).
- 20 *Ibid* s 11 (2) (l).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

622 Optional provisions

TEXT AND NOTE 6--The Care of Cathedrals Measure 1990 makes further provision for the care and conservation of cathedrals, and in specified cases in connection with fabric and property the Chapel will require approval under this Measure before it can implement or consent to the implementation of any proposal: s 2 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 1). As to the procedure on applications for approval under the Care of Cathedrals Measure 1990 s 2 see the Care of Cathedrals Rules 1990, SI 1990/2335.

The Chapter must compile an inventory of all objects which the fabric advisory committee (see PARA 633A) considers to be of architectural, archaeological, artistic or historic interest: Care of Cathedrals Measure 1990 s 13 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 13).

TEXT AND NOTE 10--For 'Cathedrals Commission' read now 'Cathedral Statutes Commission': Cathedrals Measure 1976 s 1(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/623. Parishes of parish church cathedrals.

623. Parishes of parish church cathedrals.

The constitution and statutes of a parish church cathedral¹ may provide for the transfer to the administrative body² of the cathedral of all functions³ previously exercisable, in relation to the parish of that cathedral, by the parochial church council⁴. In that case the constitution and statutes must also provide that at least one-third of the lay persons appointed to the council, chapter or committee which is responsible for the performance of those functions⁵ shall be elected at the annual parochial church meeting⁶.

Upon such transfer of functions, the Church Representation Rules have effect, subject to certain modifications, in relation to the parish concerned⁷. The Parochial Church Councils (Powers) Measure 1956 has effect likewise, with certain modifications⁸. As a further consequence of this transfer of functions property held by the parochial church council, or by the diocesan authority⁹ on its behalf¹⁰, becomes (subject to certain conditions and exceptions) vested in the capitular body¹¹ of the cathedral¹².

Where provision is made for such a transfer of functions the constitution and statutes may confer on the administrative body of the cathedral power to appoint a parochial committee to which that body may delegate such of the transferred functions as it thinks fit¹³.

1 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

2 For the meaning of 'administrative body', see PARA 619 note 3 ante.

3 For the meaning of 'functions', see PARA 617 note 3 ante.

4 Cathedrals Measure 1963, s 12 (1). For the purposes of s 12 the functions of a parochial church council include any powers to act in the administration of a charity established for ecclesiastical purposes: s 12 (7). As to parochial church councils, see PARA 568 et seq ante.

5 See PARA 619 ante.

6 See the Cathedrals Measure 1963, s 12 (2). Thus, where the functions are transferred to a cathedral council at least one-third of the lay members of the council are to be elected at the annual parochial church meeting (as to which see PARA 563 et seq ante: s 12 (2) (a)); where the functions are transferred to an administrative chapter at least one-third of either the lay persons appointed as additional members of that chapter for the purpose of considering cathedral finances and property or the lay members of the committee appointed under s 8 (c) (ii) are to be so elected (s. 12 (2) (b)); and where the functions are to be transferred to the cathedral chapter at least one-third of the lay persons appointed as additional members of the administrative committee for the purpose of considering cathedral finances and property or the lay members of the committee appointed under s 8 (d) (ii) are to be so elected (s. 12 (2) (c)). As to these bodies, see PARA 619 ante.

7 Ibid s 12 (3). The rules cited in s 12 (3) are the Rules for the Representation of the Laity, which have been superseded by the Church Representation Rules contained in the Synodical Government Measure 1969, Sch. 3 (see PARA 389 ante), and the Cathedrals Measure 1963, s 12 (3), must be construed as referring to the compounding provisions of those rules. With the substitution of appropriate new references, the principal modifications appear to be as follows: (1) for any reference to the parochial church council there must be substituted a reference to the administrative body (Cathedrals Measure 1963, s 12 (3) (a)); (2) the Church Representation Rules, rr 8 (3), (5) (submission of accounts to annual meeting; appointment of auditors), 12 (membership of council), 13 (referring to App. II), 14 (terms of office), 16 (parishes with several churches), 18 (2) (extraordinary meetings) and App. II (officers and meetings) (see PARA 564 et seq ante) do not apply (Cathedrals Measure 1963, s 12 (3) (b)); (3) for the purposes of the Church Representation Rules, r 18 (1), the written representation calling for a special church meeting must be by not less than one-half of the lay members of the administrative body (Cathedrals Measure 1963, s 12 (3) (d)). The application of the Church

Representation Rules is subject, moreover, to certain restrictions on the right of the annual parochial church meeting to receive information and accounts under r 8 (1): Cathedrals Measure 1963, s 12 (3) proviso.

8 Ibid s 12 (4). The modifications are (1) that for any reference to the parochial church council there must be substituted a reference to the administrative body (s. 12 (4) (a)), and (2) that the Parochial Church Councils (Powers) Measure 1956, ss 3 (council as corporate body), 5 (1) (power to hold property), 6 (other provisions as to property), 7 (iii), (iv) (parish clerk and sexton; disposal of alms), 8 (accounts), and 9 (bishop's powers) (see PARA 574 et seq ante) shall not apply (Cathedrals Measure 1963, s 12 (4) (b)).

9 'Diocesan authority' means the diocesan board of finance (as to which see PARAS 517, 518 ante) or any existing or future body appointed by the diocesan synod to act as trustees of diocesan trust property: ibid s 52 (1).

10 Ie vested in the diocesan authority under the Parochial Church Councils (Powers) Measure 1956, s 6 (2), or vested in it as a custodian trustee on behalf of the council.

11 For the meaning of 'capitular body', see PARA 610 note 6 ante.

12 Cathedrals Measure 1963, s 12 (5). However, any stock which is only transferable in books kept by a company does not so vest, but any person in whom the stock is vested must at the request of the capitular body, forthwith apply to the company to transfer the stock into that body's name: s 12 (5) proviso (a). 'Stock' includes any share, annuity or other security, and 'company' includes the Bank of England and any company or person keeping books in which any stock is registered or inscribed: s 52 (1). The vesting or transfer or property by virtue of s 12 (5) does not affect any previously existing trust or contract of any mortgage or other charge affecting the property: s 12 (5) proviso (b). For provisions as to the holding of property by or on behalf of a parochial church council, see PARA 583 ante, 1067 post.

13 Ibid s 12 (6).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

623 Parishes of parish church cathedrals

NOTE 7--Modifications now incorporated in 1963 Measure s 12(3) (substituted by Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 10).

NOTE 8--1956 Measure s 7(iv) amended: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 13 (see PARA 585, PARA 981). 1956 Measure s 8 substituted: see PARA 585).

NOTE 10--1956 Measure s 6(2) does not apply to advowsons: Church of England (Miscellaneous Provisions) Measure 1992 s 10(2) (see PARA 583).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/624. Power to make rules or byelaws.

624. Power to make rules or byelaws.

The constitution and statutes of any cathedral church¹ may confer on the administrative body² of the cathedral, and also, in the case of a parish church cathedral³, on its capitular body⁴, power to make rules or byelaws regulating any matter within the jurisdiction of that body as defined by the constitution and statutes⁵. The constitution and statutes may provide that the consent of such body or person as may be specified therein is to be required before any rule or byelaw is made relating to any such matter as is so specified⁶, and may provide for the settling of questions and disputes arising in relation to any rules or byelaws so made⁷.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

3 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

4 For the meaning of 'capitular body', see PARA 610 note 6 ante.

5 Cathedrals Measure 1963, s 13.

6 Ibid s 13 (a).

7 Ibid s 13 (b).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(1) CONSTITUTION OF CATHEDRALS/(ii) Cathedral Schemes/B. THE CONTENT OF CATHEDRAL SCHEMES/625. Conversion of parish church cathedral into dean and chapter cathedral.

625. Conversion of parish church cathedral into dean and chapter cathedral.

A scheme prepared by the Cathedrals Commission¹ may provide that a parish church cathedral² shall become a dean and chapter cathedral³. However, no draft scheme for this purpose may be submitted⁴ without the Queen's consent⁵, and where the patron of the benefice is a person other than the bishop⁶ his consent is required before any such draft scheme is laid⁷ before the General Synod⁸.

Any such scheme must provide a new constitution and statutes for the cathedral or amend the existing ones so as to secure that they comply with the requirements applicable to dean and chapter cathedrals⁹, and must provide for any consequential transfer of functions and property¹⁰. The scheme cannot come into effect until the office of provost is vacant¹¹, provision has been made for the pastoral care of such part of the parish as is not to be attached to the cathedral¹², and the bishop has certified that these conditions have been complied with¹³.

1 For the meaning of 'Cathedrals Commission', see PARA 612 note 10 ante.

2 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

3 Cathedrals Measure 1963, s 14 (1). For the meaning of 'dean and chapter cathedral', see PARA 618 note 1 ante.

4 *Ibid* s 3: see PARA 614 ante.

5 *Ibid* s 14 (1) proviso (a).

6 For the meaning of 'bishop', see PARA 614 note 2 ante.

7 *Ibid* under the Cathedrals Measure 1963, s 3 (6): see PARA 614 ante.

8 *Ibid* s 14 (1) proviso (b).

9 *Ibid* s 14 (2) (a). The constitution may, however, provide for the appointment of lay persons as additional members of the administrative chapter or administrative committee, notwithstanding that s 7 (b) makes no such provision, and where any such provision is made s 7 (c) does not apply: s 14 (2) proviso; see PARA 618, text and notes 4-7 ante.

10 *Ibid* s 14 (2) (b). For the meaning of 'functions', see PARA 617 note 3 ante; and for the meaning of 'property', see PARA 618 note 6 ante.

11 *Ibid* s 14 (3) (a).

12 *Ibid* s 14 (3) (b). For this purpose a pastoral scheme must be made under the Pastoral Measure 1968 (see PARA 856 et seq post) specifying the area of the cathedral and its precincts which will cease to be part of the parish, and this scheme must come into effect either before or at the same time as the cathedral scheme: Cathedrals Measure 1963, s 14 (3) (b), (4).

13 *Ibid* s 14 (3). A plan of the area referred to in note 12 supra, must be attached to the certificate (s. 14 (4)), and the certificate must be deposited in the diocesan registry and must remain there unless and until the bishop, with the administrative body's consent, makes other provision for its safe custody (s. 14 (5)).

UPDATE

610-625 Constitution of Cathedrals

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. The provisions of the Measure, other than s 12 (see PARA 610A.8) do not apply to any charity, or to the property of any charity, except to the extent to which the Charity Commissioners for England and Wales so determine: s 34.

625 Conversion of parish church cathedral into dean and chapter cathedral

TEXT AND NOTE 1--Reference to Cathedrals Commission is now to Cathedral Statutes Commission: Cathedrals Measure 1976 s 1(1).

NOTES 3, 5, 8--1963 Measure s 14(1) amended: 1976 Measure s 1(5).

NOTE 7--1963 Measure s 3(6) now 1976 Measure s 2(7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/626. Property transferred by operation of law.

(2) PROPERTY AND FINANCE

626. Property transferred by operation of law.

At the passing of the Cathedrals Measure 1963 certain property was, by virtue of its provisions, transferred to the capitular bodies¹ of cathedrals². The provisions in question had effect in relation to any land³ which was vested for an estate in fee simple in a dean or canon as a corporation sole (being a dean or canon of a dean and chapter cathedral)⁴; and in relation to a church, churchyard⁵, house of residence⁶ or any glebe land which was vested for an estate in fee simple in the provost of a parish church cathedral⁷ as the incumbent of a benefice, together with any easements, rights or privileges annexed to it⁸. All such property vested in the capitular body of the cathedral concerned without any conveyance, assignment, transfer or other assurance⁹.

In the case of a benefice the parish church of which was a parish church cathedral, the income which at the passing of the Measure was the endowment income¹⁰ of that benefice was declared to form part of the capitular revenues of that cathedral¹¹, and it was provided that any capital money held by the Church Commissioners to the account of such a benefice should be held by them to the account of the cathedral chapter¹².

1 For the meaning of 'capitular body', see PARA 610 note 6 ante.

2 Cathedrals Measure 1963, ss 15, 16. The date of the passing of the Measure was 31st July 1963.

3 'Land' includes any corporeal or incorporeal hereditaments of any tenure: *ibid* s 52 (1).

4 *Ibid* s 15 (1). For the meaning of 'dean and chapter cathedral', see PARA 618 note 1 ante. Where at the passing of the Measure the Church Commissioners held any moneys which were the proceeds of the sale of any land previously so vested, they were required to hold those moneys on behalf of the dean and chapter: s 15 (2). 'Moneys' includes any stock, share or other security: s 52 (1).

5 'Churchyard' includes a closed churchyard: *ibid* s 52 (1).

6 'House of residence' includes all buildings, gardens and other land held with it: *ibid* s 52 (1).

7 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

8 Cathedrals Measure 1963, s 16 (1). As to the application of this provision to property vested in the Dean of Truro, see s 16 (2).

9 *Ibid* ss 15 (1), 16 (1). However, this vesting of property by virtue of these sections did not affect any previously existing trust or contract or any mortgage or other charge affecting the property: ss 15 (1) proviso, 16 (1) proviso.

10 Any question as to the endowment income was to be determined by the Church Commissioners: *ibid* s 17 (5).

11 *Ibid* s 17 (1). However, this did not affect any charge to which that income was subject at the passing of the Measure: s 17 (1) proviso. Any sum which had been appropriated to such a benefice under the Benefices (Stabilization of Incomes) Measure 1951, s 3 (b) or s 4 (2) (b), should be treated as appropriated to the cathedral chapter: Cathedrals Measure 1963, s 17 (2). As to the application of s 17 to St Mary in Truro, see s 17 (6).

12 *Ibid* s 17 (3). Where at the passing of the Measure any sums of money were standing to the credit of any repair account established under the Ecclesiastical Dilapidations Measures 1923 to 1951 (largely repealed) for such a benefice, the Church Commissioners should have power to hold those sums on behalf of the cathedral

chapter to be used for the repair of property vested in the chapter, or to transfer those sums to the fund established under the Cathedrals Measure 1963, s 27 (2) (b), in relation to the cathedral concerned: s 18. As to this fund, see PARA 633 note 6 post.

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

626 Property transferred by operation of law

NOTE 11--Section 17(2) amended: Endowments and Glebe Measure 1976 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/626A. Property.

626A. Property.

1. Vesting of property in cathedral and schemes for transfer of property to cathedral

Where immediately before the relevant date¹ any property² is vested in the dean and chapter of a cathedral or the cathedral chapter of a cathedral, that property, without any conveyance, assignment, transfer or other assurance, vests in the cathedral together with, in the case of land³, any easements, rights or other privileges annexed to⁴.

The Church Commissioners with the consent of the Chapter⁵ may prepare a scheme providing for the transfer of property by the commissioners to the cathedral⁶. Such a scheme may: (1) amend or repeal the provisions of any other scheme made under any Act or Measure relating to the property of the cathedral concerned, other than provisions forming part of the constitution and statutes of the cathedral⁷; and (2) contain such incidental, consequential or supplementary provisions as may be necessary or expedient for giving full effect to the scheme⁸.

1 As to the relevant date see PARA 610A.1.

2 'Property' includes a thing in action and any interest in real or personal property: Cathedrals Measure 1999 s 35(1).

3 'Land' includes any corporeal or incorporeal hereditaments of any tenure: *ibid* s 35(1).

4 *Ibid* s 13. Any such vesting of property does not affect any previously existing trust or contract or any mortgage or other charge affecting the property: s 13 proviso.

5 As to the Chapter see PARA 610A.3.

6 1999 Measure s 14(1).

7 *Ibid* s 14(2)(a).

8 *Ibid* s 14(2)(b).

2. Acquisition and disposal of land

The Chapter¹, before exercising any power to acquire or dispose of land², must obtain the consent of the Church Commissioners and also, in the case of the disposal of a house of residence³: (1) the consent of the dean or residentiary canon⁴ who normally occupies the house except during a vacancy in the office of the dean or residentiary canon, as the case may be; and (2) where the house is allocated for the use of the holder of a dignity the right of presentation to which is vested in Her Majesty, the consent of Her Majesty⁵. However, no consent is required for: (a) the grant of a lease⁶ to a clerk in Holy Orders holding office in the cathedral or to any person employed in connection with the cathedral⁷; or (b) the acquisition of land by a gift *inter vivos* or by will⁸; or (c) any transaction for which the sanction of an order is required under the Charities Act 1993⁹; or (d) any transaction relating to land which immediately before the relevant date¹⁰ is held by the dean and chapter of the cathedral of St Paul in London as part of the Tillingham estate¹¹.

The Church Commissioners may by order except from the above provisions transactions relating to land forming part of an estate specified in the order or transactions of a class so

specified or relating to property¹² of a class so specified¹³. A statement in a document sealed by the Chapter that the consent of the Church Commissioners is not required is sufficient evidence of that fact¹⁴.

1 As to the Chapter see PARA 610A.3.

2 For the meaning of 'land' see PARA 626A.1 NOTE 3. Any reference in the Cathedrals Measure 1999 to a power to dispose of land is to be construed as comprising a power to sell, grant a lease or licence of, exchange, mortgage or charge land and to dedicate land for the purposes of a highway: s 35(3).

3 Ibid s 15(1). 'House of residence' includes all buildings, gardens and other land held therewith: s 35(1).

4 'Residentiary canon' includes a stipendiary canon: ibid s 35(1). For provisions concerning residentiary canons see PARA 610A.7; as to canons generally see PARA 643 et seq.

5 1999 Measure s 15(1).

6 'Lease' includes a tenancy: ibid s 35(1).

7 Ibid s 15 proviso (i).

8 Ibid s 15 proviso (ii).

9 Ibid s 15 proviso (iii). As to orders under the Charities Act 1993 see generally CHARITIES.

10 As to the relevant date see PARA 610A.1.

11 1999 Measure s 15 proviso (iv).

12 For the meaning of 'property' see PARA 626A.1 NOTE 2.

13 1999 Measure s 15(2). The sealing by the Church Commissioners of any document under s 15 is conclusive proof that all the requirements of s 15 have been complied with: s 15(4).

14 Ibid s 15(5).

3. Cathedral moneys

The Chapter¹ of any cathedral may exercise the following powers in respect of moneys² which form part of the endowment of the cathedral or are otherwise vested in the cathedral or which are vested in the Church Commissioners on its behalf³: (1) power to invest such moneys in the acquisition of land⁴, including participation in any collective investment scheme operated for these purposes by the Church Commissioners⁵; (2) power to invest such moneys in any investment fund or deposit fund constituted under the Church Funds Investment Measure 1958⁶; (3) the power to invest in any investments in which trustees may invest under the general power of investment in the Trustee Act 2000⁷; and (4) power to use such moneys for the improvement or development of any property⁸ vested in the cathedral⁹. Before investing any moneys in the acquisition of land, the Chapter must obtain certain consents¹⁰.

Moneys which form part of the endowment of the cathedral may not be used for the improvement or development of the cathedral or certain other buildings¹¹, and, before using them for the improvement or development of any other property, the Chapter must obtain the consent of the Church Commissioners¹². Moneys which form part of the endowment of the cathedral may not be used for the repair of any property¹³.

Where any property which forms part of the endowment of a cathedral is disposed of, the proceeds of the disposal, including any moneys received by way of loan on a mortgage or charge on land or premium on the grant of a lease¹⁴, must be treated as part of the endowment of the cathedral¹⁵.

Where the Church Commissioners hold on behalf of any cathedral any moneys which form part of the endowment of that cathedral, the Church Commissioners may, if the Chapter requests them to do so, make payments out of those moneys for the purpose of enabling the Chapter to exercise any of the powers specified in heads (1)-(4) above¹⁶.

The Chapter of the cathedral may allocate for the use of any person holding an office in connection with the cathedral any house vested in the cathedral, as a residence from which to perform the duties of that office¹⁷.

1 As to the Chapter see PARA 610A.3.

2 'Moneys' includes any stock, share or other security, and 'stock' includes any share, annuity or other security: Cathedrals Measure 1999 s 35(1).

3 Ibid s 16(1).

4 For the meaning of 'land' see PARA 626A.1 NOTE 3.

5 1999 Measure s 16(1)(a).

6 Ibid s 16(1)(b). As to the Church Funds Investment Measure 1958 see PARAS 1249-1251.

7 Ie the general power of investment in the 2000 Act s 3 as restricted by ss 4, 5 (see TRUSTS vol 48 (2007 Reissue) PARAS 1012-1013): 1999 Measure s 16(1)(c) (substituted by the 2000 Act s 40(1), Sch 2 para 57(a)).

8 For the meaning of 'property' see PARA 626A.1 NOTE 2.

9 1999 Measure s 16(1)(d).

10 Ibid s 16(2). The consents referred to are those required under s 15: see PARA 626A.2.

11 Ie any building falling within the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, PARA 5(2)(a): see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1101.

12 1999 Measure s 16(3).

13 Ibid s 16(4). Where the Chapter is satisfied that an emergency has arisen which justifies the expenditure of such moneys on the repair of the cathedral or any other building falling within SI 1994/1771 para 5(2)(a), it may, with the consent of the commissioners, incur that expenditure and the sum expended must be replaced by the Chapter within such period and in such manner as may be agreed between the commissioners and the Chapter: 1999 Measure s 16(4).

14 For the meaning of 'lease' see PARA 626A.2 NOTE 6.

15 1999 Measure s 17.

16 Ibid s 18.

17 Ibid s 19.

4. Inspection of cathedral property

It is the duty of the Chapter¹ of each cathedral to arrange, during the period of five years beginning with the relevant date² and during every subsequent period of five years, for an architect³ or surveyor⁴ to carry out an inspection of all property⁵ other than the cathedral and any ancillary building⁶ which the Chapter is liable to repair and maintain, and to make a report in writing to the Chapter on any works which the architect or surveyor considers will need to be carried out in relation to that property and of the urgency with which the architect or surveyor considers that they should be carried out⁷. In the case of property within the precinct⁸ of the cathedral the report must be compiled in consultation with the cathedral archaeologist, if any⁹ and the Chapter must send a copy of the report to the fabric advisory committee of the cathedral and to the Cathedrals Fabric Commission for England¹⁰.

- 1 As to the Chapter see PARA 610A.3.
- 2 As to the relevant date see PARA 610A.1.
- 3 'Architect' means a person registered under the Architects Act 1997 (see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 233 et seq): Cathedrals Measure 1999 s 35(1).
- 4 'Surveyor' means a member of the Royal Institution of Chartered Surveyors qualified as a chartered building surveyor: ibid s 35(1). As to building surveyors see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 4.
- 5 For the meaning of 'property' see PARA 626A.1 NOTE 2.
- 6 Ie any ancillary building within the meaning of the Care of Cathedrals Measure 1990 s 14(6) (see PARA 633 A.1).
- 7 Cathedrals Measure 1999 s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 8).
- 8 'Precinct' means the precinct for the time being indicated on the plan required for that cathedral by the Care of Cathedrals Measure 1990 s 13(3), (4) (see PARA 633A.1 NOTE 19): 1999 Measure s 35(1).
- 9 Ie a cathedral archaeologist appointed under the Care of Cathedrals Measure 1990 s 12(2) (see PARA 633A.1).
- 10 Ibid s 20(2) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 9). As to the Fabric Commission see PARA 633A.

5. Financial provisions

The Church Commissioners must pay out of their general fund to the dean of each cathedral and to two residentiary canons of each cathedral who are engaged exclusively on cathedral duties¹ such sums by way of stipend or other emoluments as the commissioners may determine². The Chapter³ of a cathedral may, with the consent of the Church Commissioners, pay to the dean or to any residentiary canon to whom the commissioners are required to make a payment such additional stipend or other emoluments as they may think fit⁴. Where any person is appointed dean of a cathedral or is appointed a residentiary canon whose stipend is to be paid by the commissioners, the commissioners have power to make out of their general fund to that person a grant towards removal expenses incurred by him⁵.

The commissioners have power to make out of their general fund: (1) such grants as they may determine for the payment of⁶ (a) the stipend or other emoluments of any clerk in Holy Orders holding office in the cathedral, other than a dean or residentiary canons⁷; and (b) the salary or other emoluments of any lay person employed in connection with the cathedral⁸; (2) such grants as they may think fit to any cathedral for the purpose of securing the better provision of houses for clerks in Holy Orders who hold office in the cathedral⁹; and (3) such grants as they may think fit to any cathedral for the repair of any chancel, other than the chancel of the cathedral, which that body is wholly or partly liable to repair¹⁰.

The Chapter of any cathedral has power to borrow money for any purpose connected with the cathedral¹¹. The Chapter must maintain proper records of income and expenditure, assets and liabilities, and must prepare an annual report and accounts which show a true and fair view of the transactions throughout the year and of the position at the end of the year in accordance with best professional practice and standards¹². The Commissioners have the power to specify what constitutes best professional practice and standards relating to the report and accounts, and to inquire into any departure from those practices and standards¹³. A copy of the annual report and audited accounts must be sent to the Church Commissioners and to any other person who requests it, and displayed in a prominent position in or in the vicinity of the cathedral¹⁴.

1 As residentiary canons engaged exclusively on cathedral duties see PARA 610A.7; as to canons generally see PARA 643 et seq.

2 Cathedrals Measure 1999 s 21(1).

3 As to the Chapter see PARA 610A.3.

4 1999 Measure s 21(2).

5 Ibid s 22.

6 Ibid s 23.

7 Ibid s 23(a).

8 Ibid s 23(b).

9 Ibid s 24.

10 Ibid s 25.

11 Ibid s 26. If the purpose for which money is to be borrowed is such that the use of moneys forming part of the endowment of the cathedral for that purpose would require the consent of the commissioners, then the consent of the commissioners must be required for the borrowing of the money under s 26: s 26 proviso.

12 Ibid s 27(1). The accounts must be audited by a person who may, under the Charities Act 1993 s 43 (see CHARITIES VOL 8 (2010) PARA 350) audit the accounts of a charity: 1999 Measure s 27(1).

13 Ibid s 27(2).

14 Ibid s 27(3).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/627. Schemes providing for transfer of property.

627. Schemes providing for transfer of property.

The Church Commissioners, with the consent of the administrative body¹ of the cathedral concerned and also, if the scheme transfers property² vested in a dean, provost or canon, with the consent of that dean, provost or canon, may prepare and submit to the Queen in Council for confirmation a scheme providing for the transfer of property in certain cases³. Any such scheme may provide for the transfer to the commissioners of the whole or part of the property of any capitular body⁴ (other than the cathedral church and the buildings belonging to it)⁵; it may provide for the transfer of property by the commissioners to any capitular body⁶; and it may provide for the transfer to the capitular body of any property acquired after 31st July 1963 as a corporation sole by a dean or provost or canon of the cathedral concerned⁷.

The scheme may provide for the vesting without any conveyance or other assurance of the property to be transferred⁸. It may amend or repeal the provisions of any other scheme made under any Act or Measure relating to the property of the cathedral concerned, other than provisions forming part of the constitution and statutes of the cathedral⁹, and it may contain such incidental, consequential or supplementary provisions as may be necessary for giving full effect to the scheme¹⁰.

1 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

2 For the meaning of 'property', see PARA 618 note 6 ante.

3 Cathedrals Measure 1963, s 19 (1). The Ecclesiastical Commissioners Act 1840, ss 84-86, 88, 89, and the Church Property (Miscellaneous Provisions) Measure 1960, s 24, apply to the making, publishing and registering of a Order in Council confirming a scheme under the Cathedrals Measure 1963, s 19: s 19 (3). Cf. para 371 note 15 ante.

4 For the meaning of 'capitular body', see PARA 610 note 6 ante.

5 Cathedrals Measure 1963, s 19 (1) (a). The transfer may be for such consideration and on such terms as the commissioners think fair and reasonable, including the extinguishment of any right of the commissioners to receive any part of the income or property of that capitular body: s 19 (1) (a).

6 Ibid s 19 (1) (b). The transfer may be either in consideration of a reduction of any annual sum payable by the commissioners to the capitular body or in consideration to the payment of any sum of money or the transfer of any property to the commissioners or for no consideration: s 19 (1) (b).

7 Ibid s 19 (1) (c). This applies, in the case of a provost, whether the property was acquired by him as provost or as incumbent: s 19 (1) (c).

8 Ibid s 49 (1). The production of a copy of the Order in Council confirming a scheme under this Measure is sufficient authority to any company to transfer stock into the name of, and to pay dividends to, the transferee, and the stock must be transferred and the dividends paid accordingly: s 49 (2). For the meaning of 'company' and 'stock', see PARA 623 note 12 ante.

9 Ibid s 19 (2) (a).

10 Ibid s 19 (2) (b).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

627 Schemes providing for transfer of property

TEXT AND NOTES--In respect of cathedrals existing on 30 June 1999, any scheme made under the Cathedrals Measure 1963 s 19(1) and in force immediately before the relevant date continues to have effect as if made under the Cathedrals Measure 1999 s 14(1) (see PARA 626A.1): s 38(4). As to the relevant date see PARA 610A.1.

If the property is an object of architectural, archaeological, artistic or historic merit, any proposal concerning transfer will require approval under the Care of Cathedrals Measure 1990: s 2 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 1). As to the procedure on applications for approval under the Care of Cathedrals Measure 1990 s 2 see the Care of Cathedrals Rules 1990, SI 1990/2335.

NOTE 3--Reference to the Ecclesiastical Commissioners Act 1840 s 85 (repealed) omitted: 1963 Measure s 19(3); Statute Law (Repeals) Act 1993. Ecclesiastical Commissioners Act 1840 s 89 repealed; Church Property (Miscellaneous Provisions) Measure 1960 s 24(1) amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/628. Acquisition and disposal of land.

628. Acquisition and disposal of land.

Subject to what follows a capitular body¹, dean, provost or canon² has power to sell, grant a lease³ of, exchange, mortgage or charge land⁴, and to dedicate land for the purposes of a highway⁵; power to acquire land by gift inter vivos or by will⁶; and power to acquire land required for providing access to land owned by it or him or for improving the amenities of any such land⁷. Subject to what follows a capitular body also has power to acquire land for improving the amenities of the cathedral church⁸, for any ecclesiastical, educational or other charitable purpose connected with the cathedral or any parish of which the cathedral or any part of it is the parish church⁹, and for the provision of houses to be occupied by persons engaged or to be engaged in duties connected with the cathedral¹⁰. The foregoing powers may be exercised notwithstanding that the consideration for any transaction may not be the full consideration¹¹.

Before exercising any of these powers the capitular body, dean, provost or canon must, except in certain specified cases¹², obtain the consent of the Church Commissioners¹³. If the transaction concerns the disposal, leasing, mortgaging or charging of a house of residence¹⁴, it or he must obtain, in addition, the consent of the bishop¹⁵ or, during a vacancy of the see, the guardian of the spiritualities¹⁶; the consent of the dean, provost or residentiary canon¹⁷ who normally occupies the house except during a vacancy in the office concerned¹⁸; and, where the house is allocated for the use of the holder of a dignity the right of presentation to which is vested in the Queen, her consent¹⁹.

1 For the meaning of 'capitular body', see PARA 610 note 6 ante.

2 For the meaning of 'canon', see PARA 618 note 2 ante.

3 'Lease' includes a tenancy: Cathedrals Measure 1963, s 52 (1).

4 For the meaning of 'land', see PARA 626 note 3 ante.

5 Cathedrals Measure 1963, s 20 (1) (a).

6 Ibid s 20 (1) (b).

7 Ibid s 20 (1) (c).

8 Ibid s 20 (1) (i). For the meaning of 'cathedral church', see PARA 611 note 3 ante.

9 Ibid s 20 (1) (ii).

10 Ibid s 20 (1) (iii).

11 Ibid s 20 (4).

12 The cases in which no consent is required under *ibid* s 20 (2), include the grant of a lease to a clerk in holy orders holding office in the cathedral or to any person employed in connection with the cathedral (s. 20 (2) proviso (i)), the acquisition of land by a gift inter vivos or by will (s. 20 (2) proviso (ii)), and any transaction for which the sanction of an order is required under the Charities Act 1960, s 29 (restrictions on dealing with permanent endowment) (Cathedrals Measure 1963, s 20 (2) proviso (iii)). In addition, the Church Commissioners may by order except from the provisions of s 20 (2) transactions relating to land forming part of an estate specified in the order or transactions of a class so specified: s 20 (3).

13 Ibid s 20 (2). The sealing by the commissioners of any document under s 20 is conclusive evidence that all the requirements of the section have been complied with: s 20 (5). A statement in a document, sealed by the

capitular body, dean, provost or canon, as the case may be, that the commissioners' consent is not required is sufficient evidence of that fact: s 20 (6).

14 For the meaning of 'house of residence', see PARA 626 note 6 ante.

15 For the meaning of 'bishop', see PARA 614 note 6 ante.

16 Cathedrals Measure 1963, s 20 (2) (a). As to the guardian of the spiritualities, see PARA 489 ante.

17 For the meaning of 'residential canon', see PARA 618 note 2 ante.

18 Cathedrals Measure 1963, s 20 (2) (b).

19 Ibid s 20 (2) (c).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

628 Acquisition and disposal of land

NOTE 12--In respect of cathedrals existing on 30 June 1999, any order made under the Cathedrals Measure 1963 s 20(3) and in force immediately before the relevant date continues to have effect as if made under the Cathedrals Measure 1999 s 15(2) (see PARA 626A.2): s 38(4). As to the relevant date see PARA 610A.1.

Reference to the Charities Act 1960 s 29 (repealed) is now to the Charities Act 1993 s 36: Cathedrals Measure 1963 s 20(2)(iii) (amended by the 1993 Act Sch 6 para 6(2)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/629. Investment powers of capitular bodies.

629. Investment powers of capitular bodies.

The capitular body¹ of any cathedral church² has power to invest, in specified ways and subject to specified conditions, moneys³ which form part of the endowment of the cathedral⁴. The capitular body may also from time to time pay to the Church Commissioners any moneys in its hands which are part of the cathedral's endowment, and the commissioners must hold any moneys so paid to them free from any trust subject to which the capitular body held the moneys⁵, and must pay interest thereon to the capitular body at such rate as the commissioners may from time to time determine⁶, and must appropriate to the endowment of the cathedral a sum equal to the moneys held by them under this provision⁷.

The capitular body may with the commissioners' agreement place any moneys on deposit with them; the commissioners must hold any such moneys free from any trust subject to which the capitular body held the moneys⁸, must pay interest thereon to the capitular body at such rate as they may from time to time determine⁹, and must on request repay those moneys or part thereof to the capitular body¹⁰.

1 For the meaning of 'capitular body', see PARA 610 note 6 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 For the meaning of 'moneys', see PARA 626 note 4 ante.

4 Cathedrals Measure 1963, s 21 (1). The moneys which may be invested under this provision do not include moneys to which s 24 applies (see PARA 630 post: s 21 (1)). The powers here conferred on capitular bodies are (1) power to invest in the acquisition of land; (2) power to invest in any investment fund or deposit fund constituted under the Church Funds Investment Measure 1958 (see PARA 1249 post); and (3) the same powers of investing as a trustee has under the Trustee Investments Act 1961, s 1 (Cathedrals Measure 1963, s 21 (1) (a)-(c); these powers being exercisable in the like manner and subject to the like conditions as the powers of a trustee are exercisable under the Trustee Investments Act 1961 (see TRUSTS) (Cathedrals Measure 1963, s 21 (1)). Before investing any moneys in exercise of powers (2) and (3) or selling any investment other than land, the capitular body must obtain the advice of the Church Commissioners (either given or subsequently confirmed in writing (s. 21 (4))), and before investing any moneys in the acquisition of land, it must obtain the like consents as are required under s 20 (see PARA 628 ante) for the sale of any land by a capitular body: s 21 (3). The commissioners' advice or consent given under the foregoing provisions is deemed to be proper advice for the purposes of the Trustee Investments Act 1961, s 6 (2), (3): Cathedrals Measure 1963, s 21 (5). As to tenancies of property belonging to a capitular body, see the Leasehold Reform Act 1967, s 31, and LANDLORD AND TENANT.

5 Cathedrals Measure 1963, s 21 (2) (a).

6 Ibid s 21 (2) (b).

7 Ibid s 21 (2) (c).

8 Ibid s 21 (6) (a).

9 Ibid s 21 (6) (b). Any interest so paid remains subject to the trusts to which the interest was subject before being placed on deposit: s 21 (6).

10 Ibid s 21 (6) (c). Any moneys so repaid remain subject to the trusts to which the moneys were subject before being so placed on deposit: s 21 (6).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

629 Investment powers of capitular bodies

NOTE 4--Leasehold Reform Act 1967 s 31 now as amended by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 10; Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 15; and SI 2009/1307 (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1509).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/630. Other provisions respecting endowment capital.

630. Other provisions respecting endowment capital.

Where any land¹ which forms part of the endowment of a cathedral church² is sold or a lease³ of any such land is granted, the proceeds of the sale or any premium obtained on the grant of the lease must be treated as part of the endowment of the cathedral⁴.

The capitular body⁵ of any cathedral church may, with the consent of the Church Commissioners, use any moneys⁶ (other than those expressly excepted⁷) which form part of the endowment of the cathedral for the improvement or development of any property⁸ in which the capitular body owns an interest, other than the cathedral church and buildings ancillary to it⁹.

In certain cases where moneys are held by the commissioners on behalf of a cathedral¹⁰ the commissioners may, on the request of the administrative body¹¹, make payments out of those moneys for the improvement or development of any property in which the capitular body owns an interest, other than the cathedral church and buildings ancillary to it¹², for any purpose for which the commissioners are empowered to make grants in order to secure the better provision of houses for clergymen holding office in the cathedral¹³, or for investment in the acquisition of land¹⁴.

1 For the meaning of 'land', see PARA 626 note 3 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 For the meaning of 'lease', see PARA 628 note 3 ante.

4 Cathedrals Measure 1963, s 22.

5 For the meaning of 'capitular body', see PARA 610 note 6 ante.

6 For the meaning of 'moneys', see PARA 626 note 4 ante.

7 Ie moneys to which the Cathedrals Measure 1963, s 24 applies: see infra.

8 For the meaning of 'property', see PARA 618 note 6 ante.

9 Cathedrals Measure 1963, s 23. A dwelling house is not to be regarded as a building ancillary to a cathedral church: s 52 (3).

10 The moneys concerned are any moneys held by the commissioners on behalf of a capitular body which form part of the endowment of the cathedral (whether held by them on 31st July 1963 or paid to them under ibid s 21 (2) (see PARA 629 ante), or any moneys appropriated to a cathedral chapter under s 17 (2) (see PARA 626 ante): s 24 (a), (b).

11 For the meaning of 'administrative body', see PARA 618 note 2 ante, 619 note 3 ante.

12 Cathedrals Measure 1963, s 24 (i). See also note 9 supra.

13 Ie for any of the purposes specified in ibid s 32 (see PARA 632 post): s 24 (ii).

14 Ibid s 24 (iii).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/631. Payment of personal emoluments.

631. Payment of personal emoluments.

The Church Commissioners must, in the case of each cathedral church¹, pay to the dean or provost and to two residentiary canons² who are engaged exclusively on cathedral duties³ such sums by way of stipend or other emoluments as they may from time to time determine⁴. Notwithstanding anything in the cathedral constitution or statutes the capitular body⁵ of a cathedral has power to pay to any of those persons such additional stipend or other emoluments as it thinks fit⁶, but no such payment may be made without the consent of the Church Commissioners⁷.

Where a person is appointed dean or provost of a cathedral or is appointed a residentiary canon whose stipend is to be paid by the commissioners under the foregoing provisions, the commissioners may make him a grant towards his removal expenses⁸.

The commissioners have power to pay out of their general fund⁹ to the capitular body of any cathedral such grants as they may from time to time determine for the payment of the stipend or other emoluments of any clerk in holy orders holding office in the cathedral, other than a dean, provost or residentiary canon¹⁰, and the salary or other emoluments of any lay person employed in connection with the cathedral¹¹.

1 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

2 For the meaning of 'residentiary canon', see PARA 618 note 2 ante.

3 For the meaning of 'cathedral duties', see PARA 620 ante.

4 Cathedrals Measure 1963, s 28 (1). If there is only one residentiary canon engaged exclusively on such duties, or if there is none, the commissioners' obligation is reduced accordingly pending the appointment of a canon or canons for those duties (s. 28 (1) proviso (a)), and they have power in this case to make such payments as they think fit (within specified limits) towards the stipend or emoluments of any canon holding office in the cathedral on 31st July 1963 (s. 29). In determining the amounts to be paid under s 28 (1) the commissioners may take account of any other sums payable to a dean, provost or canon in right of his dignity (s. 28 (1) proviso (b)), and they may in any year pay into the capitular revenues of the cathedral a sum equal to the amount of any consequential reduction in the payment to the dean, provost or canon (s. 28 (2)).

5 For the meaning of 'capitular body', see PARA 610 note 6 ante.

6 Cathedrals Measure 1963, s 28 (3).

7 Ibid s 28 (3) proviso.

8 Ibid s 30.

9 As to the commissioners' general fund, see PARA 376 ante.

10 Cathedrals Measure 1963, s 31 (a).

11 Ibid s 31 (b).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/632. Allocation and provision of houses.

632. Allocation and provision of houses.

The administrative body¹ of any cathedral church² may allocate for the use of any person holding an ecclesiastical office in connection with the cathedral, as a residence from which to perform the duties of that office, any houses in which the capitular body owns an interest³.

For the purpose of securing the better provision of houses for clerks in holy orders who hold office in any cathedral, the Church Commissioners have power to make out of their general fund⁴ to the capitular body⁵ such grants as they think fit for the acquisition or erection of a house, or the acquisition of land⁶ for the site of a house, to be occupied by such a clerk⁷; for the purpose of land for a garden for a house occupied or to be occupied by such a clerk⁸; for the division into two or more parts of any house in which the capitular body owns an interest, and the conversion of any part of it into a residence for him⁹; for the improvement, enlargement or reduction of the size of any house occupied or to be occupied by him¹⁰, and for the payment of any incidental expenses incurred in carrying out any of the foregoing purposes¹¹.

1 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 Cathedrals Measure 1963, s 26.

4 As to the commissioners' general fund, see PARA 376 ante.

5 For the meaning of 'capitular body', see PARA 610 note 6 ante.

6 For the meaning of 'land', see PARA 626 note 3 ante.

7 Cathedrals Measure 1963, s 32 (a).

8 Ibid s 32 (b).

9 Ibid s 32 (c).

10 Ibid s 32 (d).

11 Ibid s 32 (e).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

632 Allocation and provision of houses

TEXT AND NOTES--Where an administrative body of a cathedral applies under the Care of Cathedrals Measure 1990 for approval of works affecting the immediate setting of the

cathedral or any archaeological remains within its precincts, and those works also affect clergy housing, the administrative body must give notice to the Church Commissioners, who are entitled to make representations accordingly: Care of Cathedrals Rules 1990, SI 1990/2335, r 15. As to applications for approval under the 1990 Measure generally, see PARA 633A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/633. Inspection and repair of buildings.

633. Inspection and repair of buildings.

The Cathedrals Measure 1963 required the administrative body¹ of every cathedral church², within two years from the passing of the Measure³, to prepare and submit to the Church Commissioners for their approval a plan to provide for the periodic inspection and repair of all buildings, other than the cathedral church and buildings ancillary to it⁴ which the capitular body⁵ was liable to repair, being buildings situated in the cathedral close or allocated as residences to persons holding office in the cathedral⁶. Any such plan could be varied by a subsequent plan similarly approved⁷.

Certain moneys⁸ comprised in the endowment capital of a cathedral may sometimes be made available for the repair of the cathedral church or buildings ancillary to it. If the commissioners and the administrative body of the cathedral are satisfied that an emergency has arisen which justifies the expenditure of the money for that purpose, the commissioners may, at that body's request, consent to the expenditure or themselves make payments accordingly⁹; but any sum so expended must be replaced by that body within five years in such manner as may be agreed between it and the commissioners¹⁰.

The commissioners have power to make out of their general fund¹¹ to the capitular body of any cathedral such grants as they think fit for the repair of any chancel, other than the chancel of the cathedral church, which that body is wholly or partly liable to repair¹².

1 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 Ie from 31st July 1963.

4 As to ancillary buildings, see PARA 630 note 9 ante.

5 For the meaning of 'capitular body', see PARA 610 note 6 ante.

6 Cathedrals Measure 1963, s 27 (1). The plan was to include provision for inspection by an experienced architect (defined in PARA 621 note 13 ante) or, where appropriate, by a surveyor, and for the making of a report by him on each building, containing estimates of the cost of necessary works (s. 27 (2) (a), (3)). It was also to include arrangements for the repair and maintenance of the buildings, and provision for a fund (see PARA 626 ante) into which payments would be made from the cathedral's capitular revenues (s. 27 (2) (b)), and necessary or expedient incidental, consequential or supplementary provisions (s. 27 (2) (c)).

7 Ibid s 27 (4).

8 Ie (1) any moneys forming part of the endowment of the cathedral, whether held by the capitular body or held by the Church Commissioners on its behalf, or (2) any moneys appropriated to the cathedral by virtue of ibid s 17 (2) (see PARA 626 ante): s 25 (a), (b). For the meaning of 'moneys', see PARA 626 note 4 ante.

9 Ibid s 25.

10 Ibid s 25 proviso.

11 As to the commissioners' general fund, see PARA 376 ante. Ibid s 33, actually uses the word 'funds'.

12 Ibid s 33. As to the liability for the repair of chancels of parish churches, see PARA 1100 et seq post. The incidence of this liability upon the capitular bodies of some cathedrals is thought to have had its origin in the 'appropriation' of benefices by monastic foundations in the Middle Ages.

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

633 Inspection and repair of buildings

TEXT AND NOTES--As to further provisions relating to the care and conservation of cathedrals see Care of Cathedrals Measure 1990, Care of Cathedrals (Supplementary Provisions) Measure 1994, Care of Cathedrals Rules 1990, SI 1990/2335, and PARA 633A.1, 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(2) PROPERTY AND FINANCE/633A. Care and conservation of Cathedrals.

633A. Care and conservation of Cathedrals.

The Care of Cathedrals Measure 1990 and the Care of Cathedrals (Supplementary Provisions) Measure 1994 make further provision for the care and conservation of cathedrals.

1. Applications for approval

The Care of Cathedrals Measure 1990 establishes the general principle that all functions under the Measure are to be undertaken with due regard to the fact that a cathedral is the seat of the bishop and a centre of worship and mission¹.

The carrying out of works, including works of repair or maintenance, materially affecting the character of a cathedral, its immediate setting and any archaeological remains within its precinct without approval is prohibited², as is the addition of objects materially affecting its character³, the disposal of non-exempt objects of interest⁴ and the carrying out of any work to any such objects which would materially affect the architectural, archaeological, artistic or historic character of the object⁵. The Cathedrals Fabric Commission is established to determine applications for approval made to it, to carry out advisory and educational functions and also to promote standards of good practice⁶. Fabric advisory committees for each cathedral are also established, with power to determine applications and to advise⁷. The committees also have power to determine whether an application for approval is necessary⁸.

Approval of a proposal must be sought from the Commission where that proposal is to make permanent alterations to the fabric of the cathedral, where it involves demolition of any part of the cathedral, where it will lead to the disturbance or destruction of any archaeological remains, or where it is to dispose of or carry out any work to any object designated under the Measure as being of outstanding architectural, archaeological, artistic or historic interest⁹. The Commission may also determine a proposal if it considers that it gives rise to special architectural, archaeological, artistic or historic considerations¹⁰. Otherwise, approval must be sought from the relevant committee¹¹. If a committee considers that a proposal gives rise to special architectural, archaeological, artistic or historic considerations it may refer it to the Commission¹².

There is a right of appeal to the Commission against a decision of a committee or its failure to determine an application within three months¹³. A Commission of Review is established to hear appeals against decisions of the Commission, and a decision of the Commission of Review is final¹⁴. Any approval given to an application under the Care of Cathedrals Measure 1990 will lapse at the expiry of the period of ten years from the date on which notice of the decision is given to the Chapter¹⁵.

The Commission has additional advisory and fiscal functions, and it may acquire relevant materials and arrange conferences in performing them¹⁶. The Chapter of a cathedral is now under a duty to consult the Commission before appointing a cathedral architect or surveyor of the fabric¹⁷. The Chapter of a cathedral is also required (except where the Commission decides otherwise), after consulting the Commission to appoint a cathedral archaeologist¹⁸, and to compile an inventory of all objects of interest¹⁹. The fabric advisory committee of each cathedral must designate, after consultation with the Commission, any objects it considers to be of outstanding architectural, archaeological, artistic or historical interest²⁰. By 1 October 1992 the Chapter of a cathedral must prepare a plan showing the extent of land surrounding its cathedral, on which the Commission must indicate the precincts of the Cathedral²¹. It must also

arrange for the cathedral architect or surveyor of the fabric to make five-yearly reports on necessary works and make a report in writing to the Chapter containing a summary of any works to the cathedral church²².

Where an application is made for listed building or scheduled monument consent, notice must be sent to the Commission²³. The Rule Committee has power to make rules giving effect to the Measure²⁴. Nothing in the Measure dispenses with any existing consent that needs to be obtained by a Chapter under the constitution and statutes of a cathedral²⁵.

Where the administrator of the cathedral becomes aware that an object has been discovered which appears to be an object to which the following provisions²⁶ apply, the administrator must within fourteen days notify the Commission in writing of the discovery and arrange for the object to be recorded in the inventory required to be compiled and maintained²⁷ and designated as treasure in that inventory in accordance with directions issued by the Commission²⁸. On receipt of such a notification, the secretary of the Commission must report the discovery, in writing, to the Secretary of State or to such person or body as may be designated by the Secretary of State²⁹. The Chapter of the cathedral must (1) before implementing any proposal for the sale, loan or other disposal of such an object, apply to the Commission for approval, unless the Commission's approval is required³⁰; and (2) before implementing any proposal for the sale or other disposal, other than a loan, of such an object, afford the British Museum or another registered museum nominated by the British Museum an opportunity of purchasing the object³¹.

1 Care of Cathedrals Measure 1990 s 1. The Cathedrals Fabric Commission, any fabric advisory committee and any Commission of Review must, without prejudice to the duty conferred on them by s 1, in exercising any function conferred on them by the Care of Cathedrals Measure 1990 ss 1-11, have due regard to the desirability of preserving (1) the fabric of the cathedral church and any features of architectural, artistic or historic interest which it possesses; (2) the immediate setting of the cathedral church; (3) any building within the precinct of the cathedral church of architectural, archaeological, artistic or historic interest; (4) any archaeological remains within the precinct of the cathedral church; and (5) any objects referred to in s 2(1)(b): s 11A (added by the Care of Cathedrals (Amendment) Measure 2005 s 11). 'Cathedral church' means any cathedral church in the provinces of Canterbury and York, except the cathedral Church of Christ in Oxford or any cathedral church in the diocese of Sodor and Man or in the diocese in Europe; 'building' includes any monument or other structure or erection and any part of a building as so defined and 'fabric' is to be construed accordingly; 'precinct' in relation to a cathedral church means the precinct for the time being indicated on the plan required for that cathedral church by the Care of Cathedrals Measure 1990 s 13: s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4).

2 Care of Cathedrals Measure 1990 s 2(1)(a) (s 2(1)(a), (b) amended, s 2(1)(bb) added by the Care of Cathedrals (Amendment) Measure 2005 s 1).

3 Care of Cathedrals Measure 1990 s 2(1)(c).

4 Ibid s 2(1)(b) (as amended; see NOTE 2). Where a proposal has been implemented in contravention of s 2, anything done in connection with such implementation may be approved under the Care of Cathedrals Measure 1990 and, in that event, is deemed to have been done in compliance with s 2: s 2(3); Care of Cathedrals (Supplementary Provisions) Measure 1994 s 7(2).

5 Care of Cathedrals Measure 1990 s 2(1)(bb) (as added; see NOTE 2).

6 Care of Cathedrals Measure 1990 s 3 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 2; and the Dioceses, Pastoral and Mission Measure 2007 s 63(5)). The Commission must also give advice to bishops and to the Vicar-General's court when it is sought under the Care of Cathedrals (Supplementary Provisions) Measure 1994 (see PARA 633A.2): Care of Cathedrals Measure 1990 s 3; Care of Cathedrals (Supplementary Provisions) Measure 1994 s 7(3). The Commission is constituted in accordance with the Care of Cathedrals Measure 1990 Sch 1 (amended by Care of Cathedrals (Amendment) Measure 2005 Sch 1); Instrument dated 16 January 1991.

7 Care of Cathedrals Measure 1990 s 4 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 3). The Committees are constituted in accordance with the Care of Cathedrals Measure 1990 Sch 2 (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 2). For the procedure on an application to the committees for approval of proposals, see the Care of Cathedrals Rules 1990, SI 1990/2335, r 4 and Appendix Forms 3-5. A committee member who has a personal interest in a matter before the committee may take part

in discussions on that matter provided he has declared his interest, but must withdraw before a vote is taken: r 20.

8 Care of Cathedrals Measure 1990 s 5 (substituted by the Care of Cathedrals (Amendment) Measure 2005 s 4). An application for such a determination must be made in accordance with SI 1990/2335 r 3 and Appendix Form 1.

9 Care of Cathedrals Measure 1990 s 6(1)(a) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 5(1)). If the Commission considers that a proposal falls within the Care of Cathedrals Measure 1990 s 6(1)(a), but that the proposal does not give rise to considerations of sufficient importance to require an application to be considered by it, it may make a declaration in writing to that effect and any application for approval of the proposal is to be made instead to the fabric advisory committee: s 6(2A) (s 6(2A)-(2D) added by the Care of Cathedrals (Amendment) Measure 2005 s 5(3)). The Commission has power to determine that the Care of Cathedrals Measure 1990 s 6(1)(a) is not to apply to proposals specified by the Commission (see s 6(2B)) and to make a declaration that no approval is required under the Care of Cathedrals Measure 1990 for a certain proposal (see s 6(2C), (2D)).

10 Care of Cathedrals Measure 1990 s 6(2). Applications to the Commission for approval of proposals must be made in accordance with SI 1990/2335 r 5 and Appendix Forms 6-8. A member of the Commission who has a personal interest in a matter before it may take part in discussions on that matter provided he has declared his interest, but must withdraw before a vote is taken: r 20.

11 Care of Cathedrals Measure 1990 s 6(3).

12 Ibid s 6(3). An application for approval under s 2(3) must be made to the Commission: s 6(3A); Care of Cathedrals (Supplementary Provisions) Measure 1994 s 7(4). As to the procedure for applications to a committee and the Commission see Care of Cathedrals Measure 1990 ss 7, 8 (amended by the Care of Cathedrals (Amendment) Measure 2005 ss 7, 8); Care of Cathedrals (Supplementary Provisions) Measure 1994 s 7(5); and SI 1990/2335 rr 4, 5. SI 1990/2335 also makes provision as to departures from forms in the Appendix thereto, the display of notices, the copying of documents, the submission of evidence and the service of notices and other documents: rr 12-14, 16, 21. Fees in relation to any matter under the Care of Cathedrals Measure 1990 may be prescribed by the Fees Advisory Commission: SI 1990/2335 r 19.

13 Care of Cathedrals Measure 1990 s 9. For the procedure on an appeal to the Commission, see SI 1990/2335 rr 6, 7 and Appendix Forms 9-12.

14 Care of Cathedrals Measure 1990 s 10; Care of Cathedrals (Supplementary Provisions) Measure 1994 s 7(6). The Commission of Review is constituted in accordance with the Care of Cathedrals Measure 1990 s 10(3) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 1). For the procedure on an appeal to the Commission, its powers to make orders as to costs, and the publication of its notices of decision, see 1990/2335 rr 8-10 and Appendix Forms 13-15. As to the right of appeal by a tenant see the Care of Cathedrals Measure 1990 s 10C (added by the Care of Cathedrals (Amendment) Measure 2005 s 10).

15 See Care of Cathedrals Measure 1990 s 10A (ss 10A, 10B added by the Care of Cathedrals (Amendment) Measure 2005 s 9). 'Chapter' means the body of that name established by the Cathedrals Measure 1999 s 2 (see PARA 610A.2); Care of Cathedrals Measure 1990 s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4). The Commission and any fabric advisory committee must each keep a register, in the prescribed form, of applications for approval dealt with by them: see the Care of Cathedrals Measure 1990 s 10B.

16 Care of Cathedrals Measure 1990 s 11 (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 paras 2, 3).

17 Care of Cathedrals Measure 2000 s 12(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 12(1)). As to the appointment of a cathedral architect or surveyor of the fabric, see PARA 621. 'Cathedral architect or surveyor of the fabric' means any architect or surveyor appointed by virtue of the Cathedrals Measure 1999 s 9(1)(f) (see PARA 610A.8) by whatever name called: Care of Cathedrals Measure 1990 s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4).

18 Care of Cathedrals Measure 1990 s 12(2) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 12(2)). 'Cathedral archaeologist' means the person appointed under Care of Cathedrals Measure 1990 s 12(2), by whatever name called, being a person who possesses such qualifications and expertise in archaeological matters as the Commission may recognise as appropriate: s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4).

19 See the Care of Cathedrals Measure 1990 s 13(1)-(1C) (s 13(1)-(1C) substituted for s 13(1) by the Care of Cathedrals (Amendment) Measure 2005 s 13(1)). The form of the inventory must accord with any directions given by the Commission and notified in writing to the administrative body: SI 1990/2335 r 17. The

administrative body must consult the fabric advisory committee in relation to the place of storage of the inventory: r 18.

20 Care of Cathedrals Measure 1990 s 13(2).

21 Ibid s 13(3) (amended by the Care of Cathedrals (Amendment) Measure 2005 s 13(3); and the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)).

22 Care of Cathedrals Measure 1990 s 14 (substituted by Care of Cathedrals (Amendment) Measure 2005 s 14). As to reports by cathedral archaeologists and the maintenance of records see the Care of Cathedrals Measure 1990 ss 14A, 14B (added by the Care of Cathedrals (Amendment) Measure 2005 s 15). The administrative body must consult the fabric advisory committee in relation to the place of storage of the architect's report and record of works: SI 1990/2335 r 18.

23 Care of Cathedrals Measure 1990 s 15. The notice must be in the prescribed form: SI 1990/2335 r 11 and Appendix Form 16.

24 Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 26 (amended by the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 9; and the Church of England (Legal Aid) Measure 1994 s 7(2), Sch 2 para 3). As to the Rule Committee see PARA 1296A. The SI 1990/2335 continues in force: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 27.

25 Care of Cathedrals Measure 1990 s 17 (amended by the Care of Cathedrals (Amendment) Measure 2005 s 13(3); and the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)). As to notices, interpretation and commencement see Care of Cathedrals Measure 1990 ss 19-21; Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7; Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4.

26 Ie the Care of Cathedrals Measure 1990 s 6A (added by the Care of Cathedrals (Amendment) Measure 2005 s 6). 'Administrator of the cathedral' means the person, by whatever name called, appointed under the Cathedrals Measure 1999 s 9(1)(e) (see PARA 610A.8): Care of Cathedrals Measure 1990 s 20(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 4).

27 Ie under the Care of Cathedrals Measure 1990 s 13.

28 Ibid s 6A(2) (as added: see NOTE 25). The Care of Cathedrals Measure 1990 s 6A applies to any object which would, but for an order under the Treasure Act 1996 s 2(2) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1086), be treasure within the meaning of the Treasure Act 1996 and which is found within the precinct of a cathedral: Care of Cathedrals Measure 1990 s 6A(1).

29 Ibid s 6A(3) (as added: see NOTE 25).

30 Ie required under ibid s 6 above.

31 Ibid s 6A(4). 'Registered museum' has the meaning ascribed to it in the Code of Practice issued under the Treasure Act 1996 s 11 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1085) or such other meaning as may be specified by the Secretary of State: Care of Cathedrals Measure 1990 s 6A(6). Rules made under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 26 (see above) may prescribe the procedure to be followed in connection with any matters arising under the Care of Cathedrals Measure 1990 s 6A and in particular must make provision for determining the purchase price to be paid under s 6A(4) and for the procedure for and the matters to be taken into account in arriving at the purchase price: s 6A(5).

2. Preliminary interviews, special visitations, injunctions and restoration orders

Where it appears to the bishop of a diocese that the Chapter of the cathedral church of the diocese may have committed or be intending to commit a prohibited act¹ in relation to a cathedral, he must, as soon as practicable and before taking any further action, afford to the members of the Chapter an opportunity of being interviewed in private by him with respect to the matter in question (a preliminary interview)².

Where it appears to a bishop, after holding a preliminary interview, that the Chapter has committed or is intending to commit a prohibited act, he must within a prescribed period order a special visitation in respect of the cathedral concerned to inquire into the matter in question³. If he does so, he must send a written statement of his reasons for ordering the visitation to the Chapter⁴. It is not necessary for a bishop to order a special visitation in respect of any act if he

is satisfied that the Chapter concerned intends to make an application for approval of that act, or that it has made such an application and the application has not been refused, or he considers that there are exceptional reasons for not doing so⁵. Without prejudice to any rule of law as to the effect of episcopal visitations, where a special visitation is ordered by a bishop, the Chapter has no power to act as such with regard to the matter under inquiry without the prior approval in writing of the bishop⁶. A special visitation must not be treated as an episcopal visitation for the purposes of any provision in the constitution and statutes of the cathedral concerned restricting the ordering of such visitations⁷.

Where it appears to a bishop that a Chapter may have committed or be intending to commit a prohibited act and he is satisfied, having regard to the urgency of the matter, that there is insufficient time to hold a preliminary interview, he may give interim directions to the Chapter before holding the preliminary interview⁸. Where a bishop has ordered a special visitation he may also give directions to the Chapter⁹. Directions given by a bishop must be in writing unless he is satisfied, having regard to the urgency of the matter, that there is insufficient time for them to be committed to writing¹⁰. The Chapter is under a duty to comply with any directions given to it¹¹.

Where a bishop has ordered a special visitation and he considers it necessary or expedient to take further steps in respect of any actual or intended prohibited act, he may authorise a person designated by him to institute proceedings on his behalf against the Chapter to obtain an injunction or a restoration order or both¹². Where a bishop proposes to authorise the institution of proceedings, he must inform the Church Commissioners of the course he proposes to take and the commissioners must, as soon as practicable, decide whether or not they would be prepared to pay¹³ any costs or expenses incurred in respect of the proceedings and, if so, to what extent, and notify the bishop of their decision¹⁴. The Vicar-General's court has jurisdiction to hear and determine such proceedings¹⁵. Where the Vicar-General is for any reason unable to act, or the cathedral concerned is in a diocese of which the Vicar-General is the chancellor, the court must be presided over by a chancellor appointed by the Archbishop of Canterbury or the Archbishop of York to act as deputy Vicar-General¹⁶. Any proceedings must be instituted and conducted in such manner as the Vicars-General of Canterbury and York, acting jointly, may direct¹⁷.

In any proceedings instituted against a Chapter the court may by way of special citation add as a further party any person who appears to be or to have been concerned in furthering the alleged prohibited act¹⁸. Where it appears to the court that the Chapter intends to commit or continue any prohibited act, the court may issue an injunction restraining (1) the Chapter from committing or continuing to commit the act, or (2) any other party to the proceedings from committing or continuing to commit any act in furtherance of the prohibited act¹⁹. Where it appears to the court that the Chapter has committed any prohibited act, the court may make a restoration order requiring the Chapter or any other party to the proceedings to take steps, within a specified time, to restore the position so far as possible to that which existed before the act was committed²⁰.

Failure to comply without reasonable excuse with any requirement of an injunction or restoration order is a contempt of the court²¹. In any proceedings, the court may order that the special visitation from which the proceedings ensued continues on such terms as it considers just or ceases, and may make such further order in relation to the proceedings as it considers just²².

1 Ie an act in contravention of the Care of Cathedrals Measure 1990 s 2 (see PARA 633A.1).

2 Care of Cathedrals (Supplementary Provisions) Measure 1994 s 1 (amended by the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)).

3 Care of Cathedrals (Supplementary Provisions) Measure 1994 s 2(1) (s 2(1)-(3) amended by the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)).

- 4 Care of Cathedrals (Supplementary Provisions) Measure 1994 s 2(1) (as amended: see NOTE 2).
- 5 Ibid s 2(2) (as amended: see NOTE 2).
- 6 Ibid s 2(3) (as amended: see NOTE 2).
- 7 Ibid s 2(4).
- 8 Ibid s 3(1) (s 3(1)-(3), (6) amended by the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)).
- 9 Care of Cathedrals (Supplementary Provisions) Measure 1994 s 3(2) (as amended: see NOTE 8). Directions under s 3 may require the Chapter to (i) take steps to avoid a contravention of the Care of Cathedrals Measure 1990 s 2, (ii) refrain from taking steps likely to lead to such a contravention, and (iii) take steps to restore the position so far as possible to that which existed before the act was committed: Care of Cathedrals (Supplementary Provisions) Measure 1994 s 3(3) (as amended: see NOTE 8). Before a bishop gives directions under head (iii), he must seek the advice of the Cathedrals Fabric Commission (see PARA 633A.1): s 3(4).
- 10 Ibid s 3(5). If directions are given orally, the bishop must as soon as practicable commit them to writing: s 3(5).
- 11 Ibid s 3(6) (as amended: see NOTE 8).
- 12 Ibid s 4(1) (amended by the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)).
- 13 Ie under the Ecclesiastical Jurisdiction Measure 1963 s 58 (see PARA 1302).
- 14 Care of Cathedrals (Supplementary Provisions) Measure 1994 s 4(2).
- 15 Ibid s 5(1).
- 16 Ibid s 5(2). A chancellor so appointed has all the powers and duties of the Vicar-General: s 5(2).
- 17 Ibid s 5(3).
- 18 Ibid s 6(1) (s 6(1), (3), (4) amended by the Cathedrals Measure 1999 s 36(1A)(a) (as added by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 10)). A special citation may require the person to whom it is issued to attend the court at a specified time and place: of Cathedrals (Supplementary Provisions) Measure 1994 s 6(2).
- 19 Ibid s 6(3) (as amended: see NOTE 18).
- 20 Ibid s 6(4) (as amended: see NOTE 18). The court must not make a restoration order in respect of any act unless it is satisfied that less than six years have elapsed since the act was committed: s 6(5). Where proceedings for obtaining a restoration order are instituted on behalf of a bishop and any fact relevant to the institution of the proceedings has been deliberately concealed from him, the period of six years does not begin to run until the bishop has discovered the concealment or could with reasonable diligence have discovered it: s 6(7). Deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach of duty: s 6(8). The court must seek the advice of the Cathedrals Fabric Commission before making a restoration order: s 6(6).
- 21 Ibid s 6(9).
- 22 Ibid s 6(10).

The Rule Committee has power to make rules giving effect to the Care of Cathedrals (Supplementary Provisions) Measure 1994: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 26; Care of Cathedrals (Supplementary Provisions) Measure 1994 s 9. As to the Rule Committee see PARA 1296A.

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the

Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

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634. Loans and borrowing powers.

The Church Commissioners have power to make to the capitular body¹ of any cathedral church² loans of such amounts, and at such rate of interest, as they think fit for the acquisition of any property³, the erection of any building or the improvement, repair or alteration of any property, other than the cathedral church and the buildings ancillary to it⁴.

The capitular body of any cathedral has power to borrow money for any purpose connected with the cathedral, subject in certain cases to the commissioners' consent⁵.

1 For the meaning of 'capitular body', see PARA 610 note 6 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 For the meaning of 'property', see PARA 618 note 6 ante.

4 Cathedrals Measure 1963, s 34. As to ancillary buildings, see PARA 630 note 9 ante.

5 Ibid s 35. If the purpose for which the money is to be borrowed is such that the use of moneys forming part of the cathedral endowment would require the commissioners' consent (see PARA 630 text to note 6 ante, 633 text to note 9 ante), then their consent is required for the borrowing of money under s 35: s 35 proviso. For the meaning of 'moneys', see PARA 626 note 4 ante.

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

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635. Accounts.

Any person in receipt of or having the administration of either the property¹ and revenues of any cathedral church² or the property and revenues annexed or belonging to any dignity or office or any corporation aggregate or sole in any cathedral church must transmit annually to the Church Commissioners duly audited accounts of the property and revenues at such time and in such form as they may prescribe³. The cathedral's administrative body⁴ must annually publish duly audited accounts⁵.

1 For the meaning of 'property', see PARA 618 note 6 ante.

2 For the meaning of 'cathedral church', see PARA 611 note 3 ante.

3 Cathedrals Measure 1963, s 38 (1).

4 For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante.

5 Cathedrals Measure 1963, s 38 (2).

UPDATE

626-635 Property and Finance

The Cathedrals Measure 1999, which requires all cathedrals to change to a single pattern of governance, repeals the Cathedrals Measure 1963 ss 6-38, 45-51 and the Cathedrals Measure 1976 ss 1-6: 1999 Measure s 39(2), Sch 3. The repeals do not apply in relation to a cathedral existing on 30 June 1999 until the relevant date: see PARA 610A.1. See further PARA 626A.

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(3) CAPITULAR BODIES, CLERGY AND OFFICERS

(i) Capitular Bodies and their Members

A. IN GENERAL

636. Composition of capitular bodies.

The principal governing body of a cathedral church is called the capitular body. In respect of its membership and its relationship to the body performing administrative functions, there is a clear distinction between dean and chapter cathedrals and parish church cathedrals. In a dean and chapter cathedral¹ the capitular body² is the general chapter, which consists of the dean and all the canons³ (whether residentiary or not), and the body charged with the performance of administrative functions (called the 'administrative body'⁴) is composed exclusively of persons who are members of the capitular body⁵. In a parish church cathedral⁶ the capitular body is the cathedral chapter, which consists of the provost, the canons of the cathedral and the archdeacons of the diocese, with the possible inclusion, for specified purposes, of the bishop; and membership of the administrative body⁷ is not necessarily confined to persons who are members of the capitular body⁸.

1 For the meaning of 'dean and chapter cathedral', see PARA 618 note 1 ante.

2 For the meaning of 'capitular body', see PARA 610 note 6 ante.

3 For the meaning of 'canon', see PARA 618 note 2 ante.

4 For the meaning of 'administrative body', in this context, see PARA 618 note 3 ante.

5 See PARA 618 ante.

6 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

7 For the meaning of 'administrative body', in this context, see PARA 619 note 3 ante.

8 See PARA 619 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(i) Capitular Bodies and their Members/A. IN GENERAL/637. Functions of capitular bodies.

637. Functions of capitular bodies.

The endowments and other property of a cathedral are, generally speaking, held by the capitular body or by the Church Commissioners on its behalf¹. The capitular body is empowered to enter into transactions with regard to the acquisition, disposal and use of property², to invest³ and borrow money⁴, and to exercise rights of patronage⁵. Grants and loans may be made to it by the commissioners for various purposes⁶. In the performance of many of its functions the capitular body is required to obtain the consent of the commissioners, and all its functions in relation to property must be delegated to the administrative body⁷. The capitular body has a common seal, kept in the custody of the administrative body, which is empowered to affix it to any document⁸.

1 See PARA 626 et seq ante.

2 See PARAS 628, 630 ante.

3 See PARA 629 ante.

4 See PARA 634 ante.

5 See PARA 621 ante, 792 post. As to the general control of the cathedral, see PARA 639 post.

6 See PARAS 631, 632, 634 ante.

7 See PARA 621 ante. For the meaning of 'administrative body', see PARA 618 note 3 ante, 619 note 3 ante. Provision may be made by the constitution and statutes for the administration of all property and revenues of or held in connection with the cathedral: see PARA 622 ante.

8 See PARA 621 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(i) Capitular Bodies and their Members/B. CHAPTERS/638. Meaning of 'chapter'.

B. CHAPTERS

638. Meaning of 'chapter'.

According to the traditional definition, a chapter is a congregation of canons of a cathedral or collegiate church¹, usually (but not necessarily) including a deacon, who is chief and head of the chapter². In the case of a dean and chapter cathedral this definition still holds good, subject to the provisions of the Cathedrals Measure 1963 and any other relevant enactment; but in the case of a parish church cathedral the constitution of the cathedral chapter and of its administrative body is such as to render inapplicable most of the earlier law relating to chapters³.

A dean and chapter is in general a corporation aggregate⁴; and it seems that, in the case of a parish church cathedral, the cathedral chapter has a similar legal status⁵.

1 See Co Litt 95a. The chapter in a collegiate church is more properly called college (Co Litt 95a, notes 102, 103). There are two collegiate churches in England, namely, the collegiate church of St Peter in Westminster (usually called Westminster Abbey) and St George's Chapel, Windsor. Both are royal peculiars and, as such, exempt from episcopal and archiepiscopal jurisdiction, coming under the personal jurisdiction of the Sovereign as visitor: see PARAS 355, 492 ante. As to Westminster Abbey, see further *Cole v Police Constable 443A* [1937] 1 KB 316, [1936] 3 All ER 107, DC. The Palace of Westminster is no longer a peculiar but is in the diocese of London: see *Combe v De La Bere* [1881] 22 ChD 316, CA.

2 Godolphin's Repertorium Canonicum 51. A chapter of a cathedral church formerly consisted of persons ecclesiastical, canons and prebendaries (of which the dean was chief), all subordinate to the bishop, to whom they acted as assistants in matters relating to the church, for its better ordering and disposing, and for confirmation of such leases of the temporalities and offices relating to the bishopric as the bishop from time to time might happen to make: Godolphin's Repertorium Canonicum 58. They were termed by the canonists 'capitulum', being anciently a kind of head, instituted not only to assist the bishop but also to rule and govern the diocese in the time of vacancy: Godolphin's Repertorium Canonicum 56. For the present law as to the guardianship of the spiritualities during a vacancy in a see, see PARAS 441, 489 ante.

3 See PARA 636 ante.

4 1 Bl Com (14th Edn) 469. However, the chapter cannot act without the dean, or during a vacancy in the deanery: see *Eire's Case* (1563) Moore KB 51; *Lyn v Wyn* (1665) O Bridg 122 at 148. As to corporations aggregate, see generally CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1109-1110.

5 In each case the capitular body has a common seal: see PARA 621 ante.

UPDATE

638 Meaning of 'chapter'

TEXT--A dean not a deacon is usually (but not necessarily) included.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(i) Capitular Bodies and their Members/B. CHAPTERS/639. Authority and functions of chapters.

639. Authority and functions of chapters.

The dean and chapter or the cathedral chapter (as the case may be) has, as capitular body¹, the general control of the cathedral in accordance with the constitution and statutes². In performing its functions it must, in respect of many matters, act through the agency of the administrative body³. It is, moreover, subject to the jurisdiction of the visitor⁴.

1 See PARA 636 ante.

2 The constitution and statutes may provide, inter alia, for the regulation and superintendence of the services, fabric, fittings, ornaments, furniture and monuments of the cathedral, and the appointment of persons employed in connection with it (see PARA 622 ante); and such functions would no doubt be assigned to the capitular body, in addition to its primary functions (see PARA 637 ante) as governing body. It has been held that, if a chapter has the power of appointment, it may remove a chorister or schoolmaster appointed by itself, subject to an appeal to the visitor: *R v Dean and Chapter of Chester* (1850) 15 QB 513; *R v Dean and Chapter of Rochester* (1851) 17 QB 1.

3 See PARAS 636, 637 ante.

4 The constitution and statutes must provide that the diocesan bishop is to be the visitor of the cathedral and must provide for the exercise of his functions as such: see PARA 617 ante. All chapters are subject to the visitation of the bishop jure ordinario (see PARA 491 ante; see also 1 BI Com (14th Edn) 479) and also of the archbishop, jure metropolitico (see PARA 431 ante), except in the case of a peculiar, which is visitable by its own peculiar Ordinary (see PARA 355 ante); but every see or cathedral as such is exempt from archidiaconal visitation (Gib Cod 171). At a visitation the bishop may order the removal of illegal ornaments erected in the cathedral by the dean and chapter, in spite of their opposition, but he cannot, at his discretion, order any alteration in the fabric of the cathedral: *Phillpotts v Boyd* (1875) LR PC 435.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(i) Capitular Bodies and their Members/C. DEANS AND PROVOSTS/640. Cathedral deans and provosts.

C. DEANS AND PROVOSTS

640. Cathedral deans and provosts.

A cathedral dean (as he is sometimes called to distinguish his office from that of other kinds of dean¹) is the head of the general chapter of a dean and chapter cathedral². A cathedral provost is the head of the cathedral chapter of a parish church cathedral, being the incumbent of the benefice of which the cathedral is the parish church³. The dean or provost, as the case may be, is styled the 'Very Reverend' and is said to be next in dignity to the bishop of the diocese⁴, although this position has also been ascribed to the chancellor of the diocese⁵ and to the archdeacon⁶. The dean or provost is an ex officio member of the diocesan synod⁷.

1 These include (1) deans of peculiars (without chapters), having sometimes both jurisdiction and cure of souls (eg the Dean of Battle) and sometimes jurisdiction only (eg the Dean of Bocking and the original Dean of the Arches); (2) rural deans (see PARA 524 et seq ante); (3) honorary deans (eg the deans and sub-deans of the chapels royal (see Co Litt 95a, note 192), and provincial deans (eg the Bishop of London as dean of the province of Canterbury: see PARA 443 note 1 ante)).

2 See PARA 618 ante.

3 See PARAS 619, 621 ante.

4 The dean of a cathedral is sometimes called the archpresbyter of the diocese: Godolphin's Repertorium Canonum 56. It has been doubted whether a dean or canon has a cure of souls (see Watson, Clergyman's Law (4th Edn) 11), but it seems probable that a dean has still the cure of souls of his chapter (see 3 Co Inst 155; Godolphin's Repertorium Canonum 55; see also *Ecclesiastical Comrs v Dean and Chapter of Kildare* (1858) 8 I Ch R 93 at 96, CA, per Napier LC).

5 Godolphin's Repertorium Canonum, Appendix, p. 5; Ayl Par 95.

6 See PARA 496 note 5 ante.

7 See PARA 505 ante. As to the possibility of membership of the convocation and the deanery synod, see PARAS 444, 528 ante, respectively.

UPDATE

640-642 Deans and Provosts

As from the relevant date (see PARA 610-625), any reference in an enactment, instrument or other document to the provost of a cathedral must, unless the context otherwise requires, be construed as a reference to the dean of the cathedral: Cathedrals Measure 1999 ss 36(4), 38(2), (3).

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641. Conditions and mode of appointment of deans and provosts.

No person is capable of receiving the appointment of a cathedral dean until he has been six years in priest's orders¹.

No person may hold a cathedral preferment² with a benefice³, or with two or more benefices authorised to be held in plurality by a pastoral scheme or order⁴ unless the cathedral statutes⁵ so provide or allow⁶, and no person may hold cathedral preferments in more than one cathedral⁷.

The constitution and statutes of a cathedral must provide for the appointment of a dean by the Queen⁸ or, in the case of a parish church cathedral⁹, for the appointment as provost¹⁰ of the incumbent of the benefice of which the cathedral is the parish church¹⁰.

The constitution and statutes must confer power to pay stipends or other emoluments to the dean or provost¹¹ out of the capitular revenues of the cathedral, the amounts being subject to the consent of the Church Commissioners¹². The commissioners must pay to the dean or provost such sums by way of stipend or other emoluments as they may from time to time determine, and with the commissioners' consent additional payments may be made to them by the capitular body¹³.

Deans and provosts are entitled on retirement to receive a pension at the appropriate rate in accordance with the provisions governing clergy pensions in general¹⁴.

1 Ecclesiastical Commissioners Act 1840, s 27; Revised Canons Ecclesiastical, Canon C21 para 1. As to the minimum age for ordination as priest, see PARA 654 post. There is no Statutory age qualification for appointment as provost of a parish church cathedral. As to impediments, cf. para 658 post.

2 'Cathedral preferment' means the office of dean, provost, residentiary canon or stipendiary canon in any cathedral: Pastoral Measure 1968, s 88 (7).

3 For the meaning of 'benefice', see *ibid* s 89 (1), and PARA 768 note 1 post: In this context it includes the office of vicar in a team ministry (as to which see PARA 870 et seq post): s 88 (7).

4 As to pastoral schemes and orders, see PARA 856 et seq post.

5 'Cathedral statutes' includes a charter or local Act relating to the cathedral: Pastoral Measure 1968, s 88 (7).

6 *Ibid* s 88 (2). This provision is subject to a saving in respect of certain persons holding office on 1st April 1969 (s. 88 (5)), and also to the provision that the holder of another ecclesiastical office may be nominated to a vacancy in a guild church (s. 92 (5); and see PARA 601 ante). 'Office' means a benefice or cathedral preferment (as to which see notes 2, 3 supra): s 88 (7).

7 *Ibid* s 88 (3).

8 Cathedrals Measure 1963, s 10 (1) (a). The customary method of appointing deans has been by royal letters patent in all cases including, since 1840, to cathedrals of the old foundation: see the Ecclesiastical Commissioners Act 1840, s 24; see also PARA 610 note 7 ante.

9 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

10 Cathedrals Measure 1963, s 10 (1) (b). In respect of all but two of the existing parish church cathedrals the bishop is the patron of the benefice, and therefore, save in the two excepted cases (Bradford and Sheffield), the provost will be collated by him.

11 Any reference in the Cathedrals Measure 1963 (except in s 10 (1) (b)) to a provost includes a reference to the Dean of St Albans and to any dean appointed after 31st July 1963 in a parish church cathedral: s 52 (2).

12 Ibid s 10 (1) (d): see PARA 621 ante.

13 Ibid s 28: see PARA 631 ante. For the meaning of 'capitular body', see PARA 610 note 6 ante. The commissioners may also make a grant towards removal expenses incurred by a newly appointed dean or provost: s 30; see PARA 631 ante. For special provisions relating to the collegiate churches of Westminster and Windsor (see PARA 638 note 1 ante, see the Collegiate Church (Capital Endowments) Measure 1970.

14 See PARA 738 et seq post. For provisions relating to the retirement of dignitaries on the ground of incapacity, see PARA 649 et seq post. As to conferment of the title of dean emeritus or provost emeritus, see PARA 622 ante.

UPDATE

640-642 Deans and Provosts

As from the relevant date (see PARA 610-625), any reference in an enactment, instrument or other document to the provost of a cathedral must, unless the context otherwise requires, be construed as a reference to the dean of the cathedral: Cathedrals Measure 1999 ss 36(4), 38(2), (3).

641 Conditions and mode of appointment of deans and provosts

TEXT AND NOTES--Except in the case of the dean of Christ Church, Oxford, no one may be appointed dean or provost after attaining 70. All holders of those offices, other than those already holding office on 1 January 1976 must retire at that age, subject to the power of the diocesan bishop to authorise continuance in office for up to one year: Ecclesiastical Offices (Age Limit) Measure 1975 ss 1, 3.

TEXT AND NOTE 1--Now no person is capable of receiving the appointment of a cathedral dean or provost until he has been six years in holy orders and is in priest's orders at the time of the appointment: 1840 Act s 27; Church of England (Miscellaneous Provisions) Measure 1995 s 5.

NOTES 2-7--1968 Measure consolidated in Pastoral Measure 1983; see s 85.

TEXT AND NOTES 8-13--Cathedrals Measure 1963 ss 10, 28, 52(2) repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

NOTE 13--Where a dean wishes to resign, it is not necessary to proceed by way of a deed, but any such resignation must be in writing, duly signed and witnessed and sent to Her Majesty: Church of England (Miscellaneous Provisions) Measure 1995 s 4.

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642. Duties of deans and provosts.

The dean or provost of a cathedral or collegiate church must take care that the statutes and laudable customs of his church (not being contrary to the Word of God or prerogative royal), the statutes of the realm concerning ecclesiastical order, and all other constitutions set forth and confirmed by the Queen's authority, and such as are enjoined by the bishop of the diocese in his visitation¹, according to the statutes and customs of the same church, and the ecclesiastical laws of the realm, are diligently observed².

The dean or provost must be resident in his cathedral or collegiate church for the time prescribed by law and by the statutes of that church, and must there preach the Word of God and perform all the duties of his office, unless he is hindered by weighty and urgent causes³.

The dean or provost and other ministers⁴ of a cathedral or collegiate church must provide, as far as in them lies, that during the time of divine service all things be done with such reverence, care and solemnity as shall set forth the honour and glory of Almighty God⁵.

1 See PARA 639 note 4 ante.

2 Revised Canons Ecclesiastical, Canon C21 para 2. This duty extends also to residentiary canons: Canon C21 para 2.

3 Ibid Canon C21 para 3. This duty extends also to residentiary canons: Canon C21 para 3. Such residence exempts him from penalties for non-residence in any benefice he may hold elsewhere: Pluralities Act 1838, s 38. As to houses of residence, see PARAS 628, 632 ante.

4 This includes residentiary canons, minor canons and vicars choral: Revised Canons Ecclesiastical, Canon C21 para 4.

5 Ibid Canon C21 para 4.

UPDATE

640-642 Deans and Provosts

As from the relevant date (see PARA 610-625), any reference in an enactment, instrument or other document to the provost of a cathedral must, unless the context otherwise requires, be construed as a reference to the dean of the cathedral: Cathedrals Measure 1999 ss 36(4), 38(2), (3).

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D. CANONS

643. Meaning of 'canon'.

The description 'canon' was originally confined to persons, other than the dean, who were residentiary members of the chapter of a cathedral or collegiate church, but in more recent times the term has acquired a more extended meaning, being applied also to non-residentiary canons¹. In the Cathedrals Measure 1963 the term is defined as including a non-residentiary² canon or prebendary, but not a minor canon or any person not in holy orders³. Much of the older law is applicable only to the limited class of residentiary canons⁴, and certain provisions of the Cathedrals Measure 1963 have a similarly restricted application⁵. Non-residentiary canons are commonly identified with honorary canons⁶; in strictness, however, it seems that the terms should not be regarded as interchangeable, since the law allows for the possibility of a stipendiary canon who is a person other than a residentiary canon, whereas an honorary canon has, as such, no emoluments⁷.

1 In some chapters canons were formerly known as 'prebendaries', a description which was superseded by the term 'canons' (Ecclesiastical Commissioners Act 1840, s 1 (repealed)), although in certain cathedrals the term 'prebendary' may still be used of the non-residentiary canons. A prebend was formerly described as an endowment in land, or pension in money given to a cathedral or conventual church 'in praebendam', namely for the maintenance of a secular priest or regular canon who was a prebendary, as supported by the prebend: Stephens, *Laws Relating to the Clergy* 409; and see *Walrond v Pollard* (1570) 3 Dyer 293 b. A canonry was also formerly a name of office, and a canon was the officer in the same manner as a prebendary, and a prebend was the maintenance or stipend both of the one and of the other: Gib Cod 172; *Dean and Chapter of Norwich's Case* (1598) 3 Co Rep 73a at 75b; *Master and Fellows of Magdalen College, Cambridge, Case* (1615) 11 Co Rep 66b at 74a; *Bishop of Chichester v Harward and Webber* (1787) 1 Term Rep 650.

2 A non-residentiary canon would usually be expected to reside in the diocese. The constitution and statutes of the cathedral may provide that he is to vacate office upon ceasing so to reside, unless requested in writing to continue in office by the bishop so, however, that one who has been appointed in connection with a specific office or function will, even though no longer residing in the diocese, continue as a canon so long as he holds that office or performs that function: Cathedrals Measure 1963, s 11 (2) (e). Provision may also be made for the appointment of non-residentiary canons who are not resident in the diocese and for the exclusion of these canons from any provision made under s 11 (2) (e): s 11 (2) (e), (f).

3 Ibid s 52 (1). As to minor canons, see PARA 647 post. The constitution and statutes of a cathedral may provide for the establishment of a college of lay canons and specify their functions: s 11 (2) (j).

4 For the meaning of 'residentiary canon', see PARA 618 note 2 ante.

5 See eg paras 620, 621, 631 ante.

6 Honorary canonries, which were intended to be conferred as a distinction upon deserving clergymen, were founded in 1840 in every cathedral in which in that year there were not already founded any non-residentiary prebends, dignities or offices (Ecclesiastical Commissioners Act 1840, s 2 (repealed)); and similar provisions for creating honorary canonries were made thereafter on the founding of new bishoprics.

7 See the definition of 'cathedral preferment' in the Pastoral Measure 1968, s 88 (7) (see PARA 641 note 2 ante), from which it appears that the office of stipendiary canon is not necessarily comprised within the description 'residentiary canon', notwithstanding the definition of 'residentiary canon' in the Cathedrals Measure 1963, s 52 (1) (see PARA 618 note 2 ante).

UPDATE

643 Meaning of 'canon'

NOTE 2--Cathedrals Measure 1963 s 11 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

NOTE 7--1968 Measure consolidated in Pastoral Measure 1983; see s 85(5).

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644. The office of canon.

A canon is, by himself, a corporation sole, at any rate in the case of a dean and chapter cathedral¹; he is also a member of the capitular body of the cathedral², which is a corporation aggregate³. He has a stall in the choir and a voice in the chapter. A canonry is the office (with the emoluments) of a canon⁴. It is doubtful whether a canon has any cure of souls⁵.

The constitution and statutes of a cathedral must specify the maximum number of residentiary and non-residentiary canons⁶, and must provide that the holders of two residentiary canonries are to be engaged exclusively on cathedral duties⁷; they may also provide for the annexation of a canonry to a specified office and for the severance of a canonry from any office to which it is annexed⁸.

A residentiary canon is subject to obligations similar to those of a dean or provost in respect of the diligent observance of the statutes and customs of the cathedral, the duties of residence and preaching, and the maintenance of proper standards in divine service⁹.

1 Cf. the Cathedrals Measure 1963, s 15 (1), and PARA 626 ante.

2 See PARA 636 ante.

3 See PARA 638 ante.

4 See PARA 643 note 1 ante.

5 See PARA 640 note 4 ante.

6 Cathedrals Measure 1963, s 10 (1) (f).

7 See PARA 620 ante.

8 Cathedrals Measure 1963, s 11 (2) (g). Thus at Blackburn, Exeter, Hereford, Leicester, Lincoln, Liverpool, Salisbury, Truro, Wells and York one of the canons is known as Chancellor. These chancellors must be distinguished from diocesan chancellors, as to whom see PARA 1275 et seq post. At Blackburn, Exeter, Lichfield, Liverpool, Salisbury, Southwark, Truro, Wells and York one of the canons is known as Treasurer. There are Canons Theologian at Coventry, Leicester, Liverpool, St Albans and Winchester. The Ely Professor of Divinity is a canon at Ely.

9 See the Revised Canons Ecclesiastical, Canon C21 paras 2-4, and PARA 642 ante.

UPDATE

644 The office of canon

TEXT AND NOTES--Cathedrals Measure 1963 ss 10-11, 15 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

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645. Conditions and mode of appointment of canons.

No person is capable of receiving the appointment of canon until he has been six years in priest's orders, except in the case of a canonry annexed to any professorship, headship or other office in any university¹. No person may hold cathedral preferments in more than one cathedral²; and restrictions are imposed on the holding of a cathedral preferment with a benefice³.

The constitution and statutes of a cathedral must provide for the appointment of canons, specifying the manner of appointment⁴. Subject to such limitations as may be imposed by or under the provisions of any enactment a canonry is a freehold office⁵.

The constitution and statutes must confer power to pay stipends or other emoluments to the residentiary canons⁶, out of the capitular revenues of the cathedral, the amounts being subject to the consent of the Church Commissioners, and regard being had to any emoluments payable to any such canon in respect of any other office or appointment and the extent to which his availability for cathedral duties is thereby materially affected⁷. The Church Commissioners must pay the two residentiary canons who are engaged exclusively on cathedral duties stipends or other emoluments and with the commissioners' consent additional payments may be made to them by the capitular body⁸.

On retirement canons are entitled to receive pensions at the appropriate rates in accordance with the provisions governing clergy pensions in general⁹.

1 Ecclesiastical Commissioners Act 1840, s 27; Revised Canons Ecclesiastical, Canon C21 para 1. For examples of canonries annexed to professorships, see the Ecclesiastical Commissioners Act 1840, ss 5-7 (canonries of Christ Church, Oxford). As to the minimum age for ordination as priest, see PARA 654 post.

2 Pastoral Measure 1968, s 88 (3). For the meaning of 'cathedral preferment', see PARA 641 note 2 ante.

3 See *ibid* s 88 (2), and PARA 641 ante. For the meaning of 'benefice', see s 89 (1), and PARA 768 note 1 post.

4 Cathedrals Measure 1963, s 10 (1) (c). The right of appointing canons was previously vested by statute either in the Crown (see eg Ecclesiastical Commissioners Act 1840, s 24, as to three canonries of St Paul's Cathedral, London) or in the bishop of the diocese, except in the case of a canonry attached to some ecclesiastical or spiritual office. It is thought that the constitutions and statutes made by schemes under the Cathedrals Measure 1963 have in most cases maintained the existing practice, and that they have effect subject to any specific provision contained in that Measure or any other enactment still in force (eg in s 41 (Norwich), ss 42, 43 (Oxford); and in the Ecclesiastical Commissioners Act 1840, s 24 (see *supra*)).

When a canon is invested in his canonry he is said to be installed. If nominated by the Queen, he is appointed by royal letters patent, and is thereupon entitled to installation: if by the bishop, he is collated and thereupon in like manner he is entitled to installation.

5 The constitution and statutes of the cathedral may provide for the vacation of office by residentiary canons at a specified age, unless the bishop, after the requisite consultation, otherwise determines: Cathedrals Measure 1963, s 11 (2) (b). Provision may likewise be made for the creation of residentiary canonries the holders of which are to continue in office for a specified term of years only, either with or without eligibility for reappointment: s 11 (2) (c). The constitution and statutes may also provide that where a clerk in holy orders who is appointed to an archdeaconry or any other diocesan office becomes (whether at the time of appointment or later) a canon on the understanding that he will hold the office of canon so long as he holds that archdeaconry or other diocesan office, he shall (unless the bishop otherwise determines) vacate office as a canon on ceasing to hold the archdeaconry or other diocesan office: s 11 (2) (d). For further provisions limiting the tenure of office of a non-residentiary canon, see PARA 647 post.

6 It seems possible that in some cases a stipend may be payable to a canon who is not a residentiary canon (see PARA 643 ante); but it is not clear whether it could be paid out of the capitular revenues.

7 Cathedrals Measure 1963, s 10 (1) (d), (e): see PARA 621 ante.

8 See *ibid* s 28, and PARA 631 ante. As to grants towards their removal expenses, see PARA 631 ante. As to houses of residence, see PARAS 628, 632 ante.

9 See PARA 738 et seq post. For provisions relating to the retirement of dignitaries on the ground of incapacity, see PARA 649 et seq post. As to the conferment of the title of canon or prebendary emeritus, see PARA 622 ante.

UPDATE

645 Conditions and mode of appointment of canons

TEXT AND NOTES--The maximum age for appointment to a residentiary canonry is now 69, except in the case of a canonry annexed to a professorship in a university: Ecclesiastical Offices (Age Limit) Measure 1975 s 1. Similarly such canons are required to retire at 70 (see s 1) subject to the power of the diocesan bishop to authorise continuance in office for up to one year: s 3; Bishops (Retirement) Measure 1986 s 11(1).

A person who is in deacon's orders and who has been ordained for a period exceeding six years may be appointed to the office of a residentiary canon, and a deacon may be appointed to the office of a non-residentiary canon, in any cathedral church with the appropriate style, title and dignity thereof, notwithstanding anything in the Act of Uniformity s 10 or in the constitution and statutes of the cathedral church to the contrary; but nothing in the constitution and statutes is to be construed as authorising or requiring a person in deacon's orders so appointed to preside at or celebrate the Holy Communion or pronounce the Absolution: Church of England (Miscellaneous Provisions) Measure 1992 ss 15, 16.

Cathedrals Measure 1963 ss 10-11, 28 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

TEXT AND NOTE 1--For 'priest's orders' read 'holy orders and be in priest's orders at the time of the appointment': 1840 Act s 27; Church of England (Miscellaneous Provisions) Measure 1995 s 5(b).

NOTE 1--See also Church of England (Miscellaneous Provisions) Measure 1995 s 2(3) (holding of regius professorship of ecclesiastical history by lay canon).

NOTES 2, 3--Consolidated in Pastoral Measure 1983; see s 85 and s 86(1).

NOTE 4--Cathedrals Measure 1963 ss 42, 43 amended: Cathedrals Measure 1976 s 7: Church of England (Miscellaneous Provisions) Measure 1978 s 10.

NOTE 8--Where a residentiary canon wishes to resign, it is not necessary to proceed by way of a deed, but any such resignation must be in writing, duly signed and witnessed and sent to, in the case of a residentiary canon where the canonry is in the direct patronage of Her Majesty, to Her Majesty, and in the case of any other residentiary canon, to the diocesan bishop concerned: Church of England (Miscellaneous Provisions) Measure 1995 s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(ii) Other Offices and Appointments/646. General provisions.

(ii) Other Offices and Appointments

646. General provisions.

The constitution and statutes of a cathedral may constitute any body or create any office for the performance of functions in relation to the cathedral, and specify the functions of that body or the person holding that office in relation to the cathedral and, where applicable, the diocese¹, and may provide for the appointment and terms of service of persons holding office in the cathedral or employed in connection with it².

The Church Commissioners may make grants to the capitular body of a cathedral for the payment of the stipend or other emoluments of any clerk in holy orders holding office in the cathedral (other than a dean, provost or residentiary canon) and for the salary or other emoluments of any lay person employed in connection with the cathedral³.

1 See the Cathedrals Measure 1963, s 11 (1) (a), (b), and PARA 622 ante. Provision may also be made for the abolition, suspension or termination of suspension of any dignity, office or body in the cathedral: s 11 (1) (f).

2 See *ibid* s 11 (1) (c), and PARA 622 ante.

3 See *ibid* s 31, and PARA 631 ante. For provisions relating to houses for clergy and others, see PARAS 628, 632 ante.

UPDATE

646-648 Other Offices and Appointments

Canterbury has revived the office of seneschal, a chief lay adviser to the dean and chapter who acts as link with the laity; see *Times*, 18 May 1974.

646 General provisions

TEXT AND NOTES--Cathedrals Measure 1963 ss 11, 31 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(ii) Other Offices and Appointments/647. Assistant clergy.

647. Assistant clergy.

The clerks in holy orders who are assistants to the members of the chapter of a cathedral or collegiate church are commonly described as minor canons or vicars choral¹. The office is very ancient, and in the past it was generally endowed². Minor canons have no cure of souls; their office is not a benefice, and since 1931 (subject to a saving in respect of interests then existing) it has no longer been capable of conferring a freehold or fixity of tenure³.

The minor canons, vicars choral and other ministers share the obligations of the dean or provost and the canons residentiary with respect to the proper conduct of divine service⁴. In the case of a parish church cathedral⁵ which has a cathedral council⁶, the constitution and statutes may provide that any functions of that council relating to the duties of the provost and canons and to the ordering of services are to be exercised by such members of the council as are clerks in holy orders, and these may include minor canons⁷.

1 See eg the Revised Canons Ecclesiastical, Canon C21 para 4 (see PARA 642 ante), where reference is made to 'minor canons, vicars choral and other ministers'. Other descriptions have also been used: cf. the Ecclesiastical Commissioners Act 1840, s 93, where 'minor canon' is defined as including every vicar, vicar choral, priest vicar and senior vicar, being a member of the choir in any cathedral or collegiate church, and Canons Ecclesiastical (1603) 42 (repealed), where reference was made to the 'petty canons, vicars choral and other ministers'. They usually include the persons serving as sacrist and precentor, although (especially in cathedrals of the old foundation (as to which see PARA 610 note 7 ante)) the office of precentor is often by custom held by a canon. This is the case at Bristol, Bury St Edmunds, Chester, Chichester, Coventry, Derby, Exeter, Guildford, Hereford, Lichfield, Lincoln, Liverpool, Salisbury, Sheffield, Southwark and York.

2 If endowed, it comes within the definition of 'cathedral preferment' in the Pluralities Act 1838, s 124. The Cathedrals Measure 1931, s 13 (repealed), made provision for the compulsory transfer of all the property of minor canons.

3 Ibid ss 24, 25. Whilst these provisions have been repealed by the Cathedrals Measure 1963, s 54 (1), Sch. 2, there is no reason to suppose that the possibility of freehold or fixity of tenure in respect of these offices has been revived.

4 See the Revised Canons Ecclesiastical, Canon C21 para 4, and PARA 642 ante.

5 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante.

6 See PARA 619 ante.

7 Cathedrals Measure 1963, s 11 (2) (m).

UPDATE

646-648 Other Offices and Appointments

Canterbury has revived the office of seneschal, a chief lay adviser to the dean and chapter who acts as link with the laity; see Times, 18 May 1974.

647 Assistant clergy

NOTE 1--Definition of 'minor canon' repealed: 1840 Act s 93; Statute Law (Repeals) Act 1993.

TEXT AND NOTE 7--Cathedrals Measure 1963 s 11 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(3) CAPITULAR BODIES, CLERGY AND OFFICERS/(ii) Other Offices and Appointments/648. Lay persons.

648. Lay persons.

The constitution and statutes of a cathedral must provide for the appointment of an architect to the cathedral¹. In practice the number of lay persons holding office in or employed in connection with the cathedral is usually considerable².

The constitution and statutes may provide for the establishment of a college of lay canons and may specify their functions³.

1 Cathedrals Measure 1963, s 10 (1) (k). As to the architect, see PARA 621 note 13 ante.

2 For provision as to the appointment and terms of service of such persons, see PARA 646 ante. Provision may also be made by the constitution and statutes for the payment of pensions to retired laymen who were employed in connection with the cathedral and to their widows and dependants: *ibid* s 11 (2) (h).

3 *Ibid* s 11 (2) (j).

UPDATE

646-648 Other Offices and Appointments

Canterbury has revived the office of seneschal, a chief lay adviser to the dean and chapter who acts as link with the laity; see *Times*, 18 May 1974.

648 Lay persons

TEXT AND NOTES--Cathedrals Measure 1963 ss 10-11 repealed with effect from the relevant date (see PARA 610-625): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(4) INCAPACITY OF CHURCH DIGNITARIES/649. Retirement of church dignitaries for incapacity.

(4) INCAPACITY OF CHURCH DIGNITARIES

649. Retirement of church dignitaries for incapacity.

Special provision is made for the retirement of certain church dignitaries in the event of their being incapacitated by age or physical or mental infirmity¹. The officers affected are deans and provosts of cathedral churches, archdeacons, canons and prebendaries, whether stipendiary or not, and clerks in holy orders holding any other ecclesiastical offices of freehold tenure, not being parochial benefices, except holders of offices in a royal peculiar², members of the dean and chapter of Christ Church, Oxford, and lay canons³.

1 See the Church Dignitaries (Retirement) Measure 1949. The Measure extends to both the provinces except the Channel Islands and the Isle of Man but may be applied to the Channel Islands in accordance with the Channel Islands (Church Legislation) Measure 1931 (see PARA 402 ante); Church Dignitaries (Retirement) Measure 1949, s 19.

2 As to royal peculiars, see PARA 492 ante.

3 Church Dignitaries (Retirement) Measure 1949, s 12. In this Measure 'dignitary' means these persons: s 12.

UPDATE

649 Retirement of church dignitaries for incapacity

TEXT--There is now an age limit of 70 for holding the offices of dean or provost of a cathedral church, other than dean of Christ Church, Oxford, and residentiary canon in a cathedral church other than a canonry annexed to a professorship in a university: Ecclesiastical Offices (Age Limit) Measure 1975 s 1, Schedule.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(4) INCAPACITY OF CHURCH DIGNITARIES/650. Investigation of incapacity of dignitaries.

650. Investigation of incapacity of dignitaries.

Where he is satisfied that such action is proper the bishop¹ may require by notice in writing that a special meeting of the cathedral chapter² of his diocese be summoned to consider and report to him whether in its opinion the dignitary³ holding office within the diocese is unable through disability arising through age or infirmity, whether bodily or mental, to discharge his duties adequately and, if so, whether it is desirable that he should retire from his office and (except where the office is an honorary one) whether on retirement any pension should be granted to him in addition to any pension to which he would have been entitled if he had retired voluntarily on account of age or infirmity⁴. The bishop must at the same time send a copy of the notice to the dignitary⁵. The bishop may, if he so desires, appoint in writing a clerk in holy orders as his representative to attend the meeting of the chapter when invited by it to do so⁶.

The chapter must consider the questions put to it and must invite the dignitary and the bishop's representative (if any) to confer with it⁷. After the conference, or after there has been a reasonable opportunity for such a conference, the chapter must submit a written report to the bishop answering the questions put to it, but it must not report that it is desirable that the dignitary should retire unless at least two-thirds of the members present and voting vote in favour of such a report⁸. The chapter may at any time before making its report request the bishop or his representative (if any) to make further inquiry into any matter and to communicate the result of the inquiry to the chapter⁹. The chapter must send a copy of its report to the dignitary¹⁰.

1 'Bishop' means the archbishop or bishop of the diocese in which the office of the dignitary concerned is held: Church Dignitaries (Retirement) Measure 1949, s 18.

2 The cathedral chapter to be summoned to consider matters referred to it by the bishop is, in the case of a cathedral not being a parish church cathedral, the dean and chapter as constituted when performing functions within the jurisdiction of the greater or general chapter, and in the case of a parish church cathedral it is the cathedral chapter as constituted by a cathedral scheme: *ibid* s 13 (1). As to these bodies, see PARAS 618, 619 ante; and as to cathedral schemes, see PARA 612 et seq ante. Where a dignitary in respect of whom proceedings are taken is a member of the cathedral chapter, he must not sit or vote at a special meeting of the chapter summoned to consider his case: s 13 (5). As to the method of summoning the chapter, see s 13 (2), (3), and as to the procedure, see s 13 (4), (6).

3 For the meaning of 'dignitary', see PARA 649 ante.

4 Church Dignitaries (Retirement) Measure 1949, s 1 (1).

5 *Ibid* s 1 (1). Notices or other documents authorised or required to be sent or given by or under the Church Dignitaries (Retirement) Measure 1949 are to be deemed to have been duly sent or given if sent through the post in a pre-paid registered letter or by the recorded delivery service addressed in the case of a dignitary having an official residence to that residence and in any other case to the dignitary at his last known place of residence: s 16; Recorded Delivery Service Act 1962, ss 1 (1), 2 (1) (b).

6 Church Dignitaries (Retirement) Measure 1949, s 1 (2).

7 *Ibid* s 1 (3). At any meeting of the chapter to which he is invited the dignitary may if he desires be assisted or in his absence be represented by a friend or adviser: s 1 (4).

8 *Ibid* s 1 (3).

9 *Ibid* s 1 (5).

10 *Ibid* s 1 (6). For the mode of sending the report, see note 5 supra.

UPDATE

650 Investigation of incapacity of dignitaries

NOTE 2--A special meeting must be summoned, giving not less than 21 days' notice, in the prescribed form, see the Church Dignitaries (Retirement) Rules 1986, SI 1986/1143, Form 3.

NOTE 4--Within 15 days of receiving a copy of the notice requiring a special meeting, the dignitary concerned may require a medical examination and the meeting of the chapter must not be summoned until a medical report has been sent to the dean or provost: *ibid* r 3.

NOTE 5--As to the form of notice, see *ibid* Form 1. The notice must be addressed to the dean or provost and a copy must be sent to the dignitary concerned with a copy of the rules: r 2(1).

NOTE 6--As to the form of appointment, see *ibid* Form 2.

NOTE 7--As to the form of notices of invitation to confer, see *ibid* Forms 4, 5. The Chapter clerk must send a copy of the notice summoning the special meeting and all representations made by the bishop or dignitary concerned to every member of the Chapter, the dignitary and the bishop's representative (if any): r 4(3). At the meetings of the chapter, the dignitary concerned is entitled to give oral evidence, call witnesses, attend any meeting at which another person is to give evidence and put questions to that person and request any other person to give oral evidence: r 5. The quorum at any meeting must be at least half of the members entitled to attend: r 6. Generally, the proceedings of a special meeting must be held in private: r 7.

NOTE 8--As to provision for rules of procedure and voting, see *ibid* rr 9, 10. For the form and contents of the report to the Bishop, see r 11 Form 7.

NOTE 9--As to the form of request to the bishop to inquire further into any matter, see *ibid* Form 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(4) INCAPACITY OF CHURCH DIGNITARIES/651. Bishop's powers in case of alleged incapacity.

651. Bishop's powers in case of alleged incapacity.

Should the cathedral chapter report that it is desirable that the dignitary¹ should retire, the bishop has power within six months of the receipt of the report (1) if the office held by the dignitary is one the right of appointment to which is vested in Her Majesty, to petition the Queen to declare the office vacant², or (2) in any other case himself to execute an instrument in the prescribed form³ declaring the office vacant as from a date specified in the declaration not being less than three nor more than six months after the date of the declaration⁴.

The vacancy may then be filled up in the same manner as if the dignitary were dead⁵.

1 For the meaning of 'dignitary', see PARA 649 ante.

2 Church Dignitaries (Retirement) Measure 1949, s.2 (1) (a). Thereupon it is lawful for Her Majesty by Order in Council to make such a declaration: s 2 (1) (a).

3 As prescribed by rules under the Church Dignitaries (Retirement) Measure 1949: see s 18. At the date (1st May 1975) at which this volume states the law no such rules had been made.

4 Ibid s 2 (1). The bishop must not exercise these powers unless he is satisfied that the provisions respecting the pensioning of the dignitary (see PARA 652 post), will be fulfilled: s 2 (1) proviso. A record of the exercise of either of these powers and a copy of the declaration must be filed in the diocesan registry: s 2 (2).

5 Ibid s 15. For the procedure for the filling up of vacancies, see eg para 497 ante (archdeacons) PARA 641 ante (deans and provosts), and PARA 645 ante (canons).

UPDATE

651 Bishop's powers in case of alleged incapacity

NOTE 3--See now the Church Dignitaries (Retirement) Rules 1986, SI 1986/1143, Form 8.

NOTE 4--The declaration must be sent to the dignitary concerned and copies sent to the dean or provost, the bishop's representative and the diocesan registrar for filing at the registry: *ibid* r 12(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(4) INCAPACITY OF CHURCH DIGNITARIES/652. Dignitaries' pension rights.

652. Dignitaries' pension rights.

If his office is vacated by a declaration either of the Queen or the bishop¹, the dignitary² is entitled from the date of vacation to any pension to which he would have been entitled if he had retired voluntarily on account of age or infirmity³ and, if the chapter's report has so recommended, to an additional pension the amount of which cannot be less than the amount recommended by the report⁴.

1 See PARA 651 ante.

2 For the meaning of 'dignitary', see PARA 649 ante.

3 Church Dignitaries (Retirement) Measure 1949, s 3 (1) (a); Clergy Pensions Measure 1961, s 47, Sch. 2. See generally para 744 post.

4 Church Dignitaries (Retirement) Measure 1949, s 3 (1) (b). The amount of the additional pension is to be agreed by the bishop and one of the ecclesiastical administrative bodies (depending on the status of the dignitary): see s 3 (1) (b). The mode of raising and paying the pension is prescribed by s 3 (3), (4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/3. CATHEDRALS/(4) INCAPACITY OF CHURCH DIGNITARIES/653. Dignitary who is also an incumbent.

653. Dignitary who is also an incumbent.

Where the dignitary¹ is also an incumbent of a parochial benefice and proceedings could prima facie be taken in respect of him either as an incumbent² or as a dignitary³, special provisions apply. If the dignitary is a dean, provost or archdeacon, proceedings must be taken against him as a dignitary and not as an incumbent, and a declaration of vacation of his office as dean, provost or archdeacon has the effect also of vacating his incumbency whether the office is annexed to the incumbency or the incumbency to the office⁴. If the dignitary is the holder of a canonry or prebend and in consequence of proceedings taken in respect of him as an incumbent the parochial benefice held by him has been declared vacant, the bishop may in his discretion⁵ execute an instrument declaring the canonry or prebend vacant or, if the case so requires, petition the Queen to make such a declaration, and from this exercise of his powers by the bishop there is no appeal⁶. The vacancy may then be filled in the same manner as if the dignitary were dead⁷.

1 For the meaning of 'dignitary', see PARA 649 ante.

2 Ie under the Incumbents (Disability) Measure 1945: see PARA 733 et seq post.

3 Ie under the Church Dignitaries (Retirement) Measure 1949: see PARA 649 et seq ante.

4 Ibid s 14 (a); Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5.

5 In this case the powers conferred by the Church Dignitaries (Retirement) Measure 1949, s 2 (see PARA 651 ante), are exercised as if the report of the ministerial committee under the Incumbents (Disability) Measure 1945 had been a report by the cathedral chapter (see PARA 650 ante): Church Dignitaries (Retirement) Measure 1949, s 14 (b); Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5.

6 Church Dignitaries (Retirement) Measure 1949, s 14 (b); Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 5.

7 Church Dignitaries (Retirement) Measure 1949, s 15. See PARA 651 note 5 ante.

UPDATE

653 Dignitary who is also an incumbent

NOTE 2--Repealed. See now Incumbents (Vacation of Benefices) Measure 1977 s 20(2).

NOTE 4--See now 1949 Measure s 14(1); 1977 Measure s 20(1).

TEXT AND NOTES 5, 6--See now 1949 Measure s 14(2); 1977 Measure s 20(2) which provides that the bishop may now exercise his discretion where a dignitary being an archdeacon, canon or prebendary is also the incumbent of a parochial benefice and resigns his benefice in consequence of a notification from the bishop under 1977 Measure s 11(2)(a) or the bishop has declared his benefice vacant under that section.

The powers of the bishop under Church Dignitaries (Retirement) Measure 1949 s 2 (see PARA 651) are exercisable as if the report of the diocesan committee or provincial tribunal under the 1977 Measure had been a report by the cathedral chapter under the 1949 Measure, see PARA 650: 1977 Measure s 20(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/654. Orders of the ministry.

4. MINISTRY

(1) CLERGY

(i) Orders

A. ORDINATION

654. Orders of the ministry.

The three orders of ordained ministers¹ in the Church of England are bishops, priests and deacons². Before executing the functions of those orders they must, unless they have already received episcopal consecration or ordination, be called, tried, examined and admitted to them according to the form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons³. The minimum age for a bishop is thirty years; for a priest, unless he is over twenty-three years of age and has a faculty from the Archbishop of Canterbury, it is twenty-four years; and for a deacon, unless he has a similar faculty, it is twenty-three years of age⁴.

1 The word 'minister' has different meanings according to the context. It may apply to a bishop, priest or deacon (Revised Canons Ecclesiastical, Canon C1 (amended by Amending Canon No. 3); *Read v Bishop of Lincoln* (1889) 14 PD 148), or to the officiant at the service (see eg Canon B8, and PARA 970 post), or it may be given a particular meaning (see eg the Church Representation Rules, r 44, contained in the Synodical Government Measure 1969, Sch. 3, and PARA 544 note 6 ante). The word 'sacerdotium' may include the diaconate, although it more properly refers to the priesthood: *Re University College, Oxford, ex parte Moorsom* (1848) 2 Ph 521 at 524, per Lord Cottenham LC. The title 'Reverend' is not confined to persons in holy orders: *Keet v Smith* (1876) 1 PD 73, PC. See also PARA 544 note 6 ante, 689 note 2 post.

2 It appears that the order of deaconesses is not one of the holy orders, as a deaconess may accept membership of any lay assembly of the Church of England: Revised Canons Ecclesiastical, Canon D1 para 5 (substituted by Canon promulgated 20th February 1973).

3 Act of Uniformity 1662, s 1 (repealed); Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons (commonly known as the Ordinal); Articles of Religion 36; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 3 (repealed). The Ordinal is not repugnant to the Word of God, and those made, ordained or consecrated bishops, priests or deacons according to it are lawfully made, ordained or consecrated: Revised Canons Ecclesiastical, Canon A4.

The term 'holy orders' implies episcopal ordination: *A-G v Glasgow College* (1846) 10 Jur 676; revsd. on another point sub nom. *Glasgow College v A-G* (1848) 1 HL Cas 800; *Bishop of St Albans v Fillingham* [1906] P 163.

4 Clergy Ordination Act 1804, s 1; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 2; Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 3 (repealed); Revised Canons Ecclesiastical, Canon C2 para 3, Canon C3 paras 5, 6; *Roberts v Pain* (1685) 3 Mod Rep 67; Gib Cod 145, 146.

UPDATE

654 Orders of the ministry

TEXT--There is now an age limit of 70 for holding most ecclesiastical offices: Ecclesiastical Offices (Age Limit) Measure 1975 s 1. The relevant offices are archbishop, diocesan bishop, suffragan bishop, dean or provost of a cathedral church, residentiary canon in a cathedral church, archdeacon, incumbent of a benefice, vicar in

a team ministry, vicar of a guild church: Schedule. The restriction does not apply to an office in a Royal Peculiar, a residentiary canonry which is annexed to a professorship in a university or the office of dean of Christ Church Oxford: s 1(2). A person who holds one of the relevant offices is required to vacate it on reaching the age of 70 (s 1(3)) with the exception of those listed in s 1(2), and of those already in office at the date of commencement of the measure: s 1(4).

A person who is the incumbent of a benefice under a pastoral scheme or order and who attains the age of 70 before that scheme or order comes into force may nevertheless be designated as holder of one of the listed offices under that scheme or order: Church of England (Miscellaneous Provisions) Measure 1978 s 2(1). Such a person will be deemed to have been the holder of the office at the commencement of the 1975 Measure within s 1(4)(d): 1978 Measure s 2(2).

NOTE 3--Where more than one form of ordination service is authorised under Canon B1 (see PARA 937), the decision as to which form of service is to be used is to be made by the bishop or archbishop who is to conduct the service: Canon B3 para 5, added by Amending Canon No 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/655. Time and place of ordination.

655. Time and place of ordination.

The proper times for ordination to the office of priest or deacon¹ are the Sundays immediately following the four Ember weeks², on the Feast of Saint Michael and All Angels (29th September) or of Saint Thomas the Apostle (21st December) or on such other days as may be provided by canon³. It must be held in the cathedral⁴, or some other church or chapel at the discretion of the bishop⁴, after Morning Prayer is ended⁵.

1 As to the consecration of bishops, see PARA 467 ante.

2 I.e. the weeks containing the Wednesday, Friday and Saturday after the First Sunday in Lent, the Feast of Pentecost, 14th September and 13th December: Gib Cod 252.

3 Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 4 (2) (repealed); Revised Canons Ecclesiastical, Canon C3 para 1. In cases of urgency the bishop may appoint some other day, being a Sunday, a Holy Day or one of the Ember Days: Canon C3 para 1.

4 Ibid Canon C3 para 2.

5 Book of Common Prayer, rubrics at the beginning of the Form and Manner of Making of Deacons and of Ordering of Priests. Any authorised service of Holy Communion may be used at an ordination: Revised Canons Ecclesiastical, Canon C3, PARA. 4A (added by Amending Canon No. 3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/656. Title to orders.

656. Title to orders.

Any person to be admitted into holy orders must first exhibit to the bishop of the diocese of whom he desires ordination a certificate that he is provided of some ecclesiastical office¹ within that diocese which the bishop judges sufficient and in which he may attend the cure of souls and execute his ministry². A bishop may also admit into holy orders³ (1) any person holding office in any university or any fellow, or any person in right as a fellow, in any college or hall in any university⁴; (2) any master in a school⁵; (3) any person who is to be a chaplain in any university or in any college or hall in any university or school⁶; (4) any person who is to be a member of the staff of a theological college⁷; and (5) any person who is living under vows in the house of any religious order or community⁸. The university, college, hall, school or house must be situate within the bishop's diocese⁹.

1 'Ecclesiastical office' is undefined but is wider than 'ecclesiastical preferment' as used in the Canons Ecclesiastical (1603) 33 (repealed).

2 Revised Canons Ecclesiastical, Canon C5 para 1. The bishop's obligation to maintain any clergyman whom he has ordained without a title until he prefers him to an ecclesiastical living (see Canons Ecclesiastical (1603) 33 (repealed)) was imposed by the pre-Reformation canon law: see Phillimore, *Ecclesiastical Law* (2nd Edn) 96-99; *Martyn v Hind* (1779) 2 Cowp 437 at 442, 443. No proceedings to enforce such an obligation have been taken for many years, however, and it is doubtful whether a plaintiff could now prove its post-Reformation acceptance: see PARA 306 ante.

3 As to admission to holy orders for service overseas, see PARA 667 post.

4 Revised Canons Ecclesiastical, Canon C5 para 2a.

5 Ibid Canon C5 para 2b.

6 Ibid Canon C5 para 2c.

7 Ibid Canon C5 para 2d.

8 Ibid Canon C5 para 2e.

9 Ibid Canon C5 para 2 proviso.

UPDATE

656 Title to orders

TEXT AND NOTES--As to the ordination of women to the office of deacon, see PARA 657A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/657. Qualifications for ordination.

657. Qualifications for ordination.

A bishop has an absolute discretion as to whom he ordains¹, but he may not admit any person into holy orders unless he be found on careful and diligent examination² to possess a sufficient knowledge of holy scripture, of the doctrine, discipline and worship of the Church of England as set forth in the ThirtyNine Articles, the Book of Common Prayer and the Ordinal, and fulfils the requirement as to learning and other qualities which, subject to any directions given by the convocation of the province, the bishop deems necessary for the office of deacon³. The candidate must have been baptised and confirmed, be a person of virtuous conversation, without crime⁴ and of good repute⁵, and be such a person as to be a wholesome example and pattern to the flock of Christ⁶.

1 Burn's Ecclesiastical Law (4th Edn) 49, 50; *R v Archbishop of Dublin* (1833) Alc & N 244.

2 The bishop must be assisted in the examination by the archdeacons and other ministers appointed for the purpose: Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 1 (1); Revised Canons Ecclesiastical, Canon C7 (amended by Amending Canon No. 1).

3 Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 1 (1) (see also s 3 (repealed)); Revised Canons Ecclesiastical, Canon C4 para 1.

4 The fact of a person having taken part in excessive ritual beyond what is sanctioned by law is no just cause against his being ordained: *Kensit v Dean and Chapter of St Paul's* [1905] 2 KB 249, DC.

5 A notice, called from its opening words a 'si quis', is published in the church of the parish where the candidate resides, requiring anyone who knows of any just cause for which the candidate ought not to be admitted into holy orders to declare it or signify it to the bishop: Gib Cod 147; 3 Burn's Ecclesiastical Law (4th Edn) 49.

6 Book of Common Prayer, Preface to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 3 (repealed); Revised Canons Ecclesiastical, Canon C4 para 1. A person who is to be made a deacon must exhibit to the bishop evidence of his birth, baptism and confirmation, a certificate that the 'si quis' has been duly read and that no impediment has been alleged, and letters testimonial as to his good life and conversation: see Canon C6 paras 1, 3. A deacon who is to be ordained priest must exhibit to the bishop his letters of orders (as to which see PARA 662 post), a certificate as to the 'si quis' and letters testimonial: see Canon C6 paras 2, 3.

UPDATE

657 Qualifications for ordination

TEXT AND NOTES--As to the ordination of women to the office of deacon and the ordination of women as priests, see PARAS 657A-657C.

NOTE 2--Such examination may be excluded by Canon in the case of deaconesses applying to be ordained to the office of deacon: 1964 Measure s 1(1); Deacons (Ordination of Women) Measure 1986 s 1(3); see further PARA 657A.

NOTE 6--Reference to the 'si quis' certificate repealed: Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/657A. Ordination of women as deacons.

657A. Ordination of women as deacons.

The General Synod may make provision by Canon to enable a woman to be ordained to the office of deacon provided she satisfies the relevant requirements¹ of Canon Law². In the case of a deaconess who is licensed or holds a bishop's permission to officiate the Canon may make provision enabling the deaconess to be ordained to the office of deacon even though her knowledge of holy scripture or of the doctrine, discipline and worship of the Church of England has not been further examined, or she has not exhibited any certificate or document³. However, a woman cannot be ordained to the office of priest⁴.

The pension provisions⁵ which apply to a male clerk in holy orders and his wife or widow now apply also to a woman who becomes a clerk in holy orders by virtue of being ordained to the office of deacon⁶.

¹ See PARA 657.

² Deacons (Ordination of Women) Measure 1986 s 1(1). As to the exhibition of a certificate, see PARA 656.

³ Ibid s 1(2).

⁴ Ibid s 1(4).

⁵ Ie under the Clergy Pensions Measure 1961 Pts III, IV and the Church of England Pensions Regulations 1988, SI 1988/2256, Pt II; 1992/1748.

⁶ 1986 Measure s 3(1). For the purpose of these provisions the retiring age of women is 60 years or such other age as the General Synod may from time to time determine: ibid s 3(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/657B. Ordination of women as priests.

657B. Ordination of women as priests.

1. Functions of bishops

The General Synod may make provision by canon for enabling a woman to be ordained to the office of priest if she otherwise satisfies the requirements of canon law as to the persons who may be ordained as priests¹. However, a woman may not be consecrated to the office of bishop².

A bishop of a diocese in office at the relevant date³ may declare that (1) a woman is not to be ordained within the diocese to the office of priest⁴, or (2) a woman is not to be instituted or licensed to the office of incumbent or priest-in-charge of a benefice, or of a team vicar for a benefice, within the diocese⁵, or (3) a woman is not to be given a licence or permission to officiate as a priest within the diocese⁶. A declaration must be contained in a written notice signed by the bishop⁷. A bishop who has made a declaration may withdraw it by written notice signed by him⁸. A copy of any notice must be sent to (1) Her Majesty, (2) the Duke of Cornwall, (3) the Lord Chancellor, (4) the archbishop of the province concerned, (5) the secretary of the diocesan synod of the diocese concerned, (6) the registrar of the province concerned, (7) the registrar of the diocese concerned, and (8) the designated officer⁹ of the diocese concerned¹⁰. Where a bishop of a diocese who has made a declaration and not withdrawn it ceases to hold that office, the declaration continues in force until the expiry of the period of six months beginning with the date on which another person becomes the bishop of that diocese¹¹. Where a declaration by a bishop is in force, a bishop discharging any functions of the bishop of the diocese¹² must not act in contravention of the declaration¹³.

It is an offence¹⁴ for any bishop to act in contravention of a declaration¹⁵.

1 Priests (Ordination of Women) Measure 1993 s 1(1). In any canon, order, rule or regulation relating to priests, words importing the masculine gender include the feminine, unless the contrary intention appears: s 9.

2 Ibid s 1(2). A motion for the final approval of a Measure or canon of the Church of England which amends or repeals any provision of the 1993 Measure or of any canon promulgated under ibid s 1 is not deemed to be carried unless it receives the assent of a majority in each House of the General Synod of not less than two-thirds of those present and voting: ibid s 11.

3 'Relevant date' means the date on which the canon enabling a woman to be ordained to the office of priest is promulgated: ibid s 2(8).

4 Ibid s 2(1)(a).

5 Ibid s 2(1)(b).

6 Ibid s 2(1)(c). A declaration under s 2(1)(c) does not prevent a woman from being allowed under any canon of the Church of England to officiate as a priest in a church or chapel for one period of not more than seven days in any period of three months without reference to the bishop or other ordinary: ibid s 2(7).

7 Ibid s 2(2).

8 Ibid s 2(3).

9 Ie a designated officer for the diocese concerned within the meaning of the Patronage (Benefices) Measure 1986 s 7(5) (see PARA 818A.5).

10 1993 Measure s 2(4) (prospectively amended by Constitutional Reform Act 2005 Sch 17 para 8(2), Sch 18 Pt 4).

11 1993 Measure s 2(5).

12 Including functions by virtue of an instrument under the Dioceses Measure 1978 s 10 or a scheme under the 1978 Measure s 11.

13 1993 Measure s 2(6).

14 Is an ecclesiastical offence for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963.

15 1993 Measure s 5(a). The 1993 Measure s 2 applies in relation to a Crown benefice and to a benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor as it applies in relation to any other benefice: *ibid* s 7(1) (prospectively amended by Constitutional Reform Act 2005 Sch 17 para 8(3), Sch 18 Pt 4). 'Crown benefice' has the same meaning as in the Patronage (Benefices) Act 1986 (see PARA 783A.9): 1993 Measure s 7(2). The 1993 Measure extends to the whole of the provinces of Canterbury and York except the Channel Islands: *ibid* s 12(3). The Measure may be applied to the Channel Islands: *ibid* s 12(4). As to the application of the Measure to the Isle of Man, see *ibid* s 12(5), Sch 4. As to the application of the Measure to the Channel Islands see the Women Priests (Channel Islands) Order 1999, SI 1999/1317.

2. Functions of parishes and cathedrals

The parochial church council of a parish¹ may pass either or both of the following resolutions² (1) that it will not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in the parish, and (2) that the administrative body will not accept a woman as the dean of its cathedral church³. A parochial church council which has passed a resolution may by resolution rescind it, and the original resolution continues in force until rescinded⁴. A motion for a resolution under head (1) above must not be considered by a parochial church council if the incumbent or priest-in-charge of the benefice concerned, or any team vicar or assistant curate for that benefice, is a woman ordained to the office of priest⁵.

A resolution must not be passed by a parochial church council unless (a) except where notice of a vacancy has been sent to the secretary of the council⁶, the secretary of the council has given to the members of the council at least four weeks' notice of the time and place of the meeting at which the motion proposing the resolution is to be considered, and (b) the meeting is attended by at least one half of the members of the council entitled to attend⁷. A copy of any resolution passed by a parochial church council must be sent to (1) the bishop of the diocese concerned, (2) the rural dean of the deanery concerned, (3) the lay chairman of the deanery synod concerned, (4) the registrar of the diocese concerned, (5) the designated officer for the diocese concerned⁸, and (6) the registered patron⁹ of the benefice concerned¹⁰.

Where a resolution is in force a person discharging any function in relation to the parish or benefice concerned must not act in contravention of the resolution¹¹. It is an offence¹² for any bishop, priest or deacon to act in contravention of a resolution or to permit any act in contravention of a resolution to be committed in any church or any building licensed for public worship according to the rites and ceremonies of the Church of England¹³.

The administrative body of a cathedral church other than a parish church cathedral may pass either or both of the following resolutions¹⁴ (1) that the administrative body will not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in the cathedral church at any service other than a service held on the direction of the bishop of the diocese, and (2) that the administrative body will not accept a woman as the dean of its cathedral church¹⁵. An administrative body which has passed a resolution may by resolution rescind it, and the original resolution continues in force until rescinded¹⁶. A motion for a resolution in respect of a cathedral church must not be considered by an administrative body if the dean or any of the residentiary canons of the cathedral church is a woman ordained to the office of priest¹⁷.

A copy of any resolution must be sent to (1) Her Majesty, (2) the bishop of the diocese concerned, (3) the secretary of the diocesan synod of the diocese concerned, and (4) the registrar of the diocese concerned¹⁸. Where a resolution is in force in respect of a cathedral church, a person discharging any function in relation to the conduct of services in the cathedral church or in relation to the appointment of the dean must not act in contravention of the resolution¹⁹.

It is an offence²⁰ for any bishop, priest or deacon to act in contravention of a resolution or to permit any act in contravention of such a resolution to be committed in any cathedral church²¹.

1 'Parish' means an ecclesiastical parish and a district which is constituted a conventional district for the cure of souls: Priests (Ordination of Women) Measure 1993 s 3(10).

2 As to the form of the resolutions, see *ibid* Sch 1.

3 *Ibid* s 3(1).

4 *Ibid* s 3(2).

5 *Ibid* s 3(3).

6 *Ie* under the Patronage (Benefices) Measure 1986 s 7(4) (see PARA 818A.1).

7 1993 Measure s 3(4).

8 *Ie* a designated officer for the diocese concerned within the meaning of the 1986 Measure s 7(5) (see PARA 818A.5).

9 *Ie* within the meaning of the 1986 Measure s 39(1) (see PARA 818A.1).

10 1993 Measure s 3(5).

11 *Ibid* s 3(6). Section 3(6) does not apply in relation to a service held in a parish church cathedral on the direction of the bishop of the diocese: *ibid* s 3(6) proviso. As to the application of the above provisions to a guild church in the City of London and parishes in which there is a parish church cathedral and in respect of which functions of the parochial church council have been transferred to the administrative body of the cathedral, see *ibid* s 3(8), (9). The 1993 Measure s 3 applies in relation to a Crown benefice and to a benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor as it applies in relation to any other benefice: *ibid* s 7(1) (prospectively amended by Constitutional Reform Act 2005 Sch 17 para 8(2), Sch 18 Pt 4). 'Crown benefice' has the same meaning as in the Patronage (Benefices) Act 1986 (see PARA 783A.9): 1993 Measure s 7(2).

12 *Ie* an ecclesiastical offence for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963.

13 1993 Measure s 5(b).

14 As to the form of the resolutions, see *ibid* Sch 2.

15 *Ibid* s 4(1).

16 *Ibid* s 4(2).

17 *Ibid* s 4(3).

18 *Ibid* s 4(4).

19 *Ibid* s 4(5). Section 4(5), in so far as it relates to the appointment of the dean of a cathedral church, applies in respect of the appointment of any dean by Her Majesty: *ibid* s 7(2).

20 For the meaning of offence, see NOTE 12.

21 *Ibid* s 5(c).

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657C. Financial provision for persons resigning from ecclesiastical service because of opposition to ordination of women as priests.

1. Entitlement to residential and financial benefit

Every clerk in holy orders¹, deaconess or licensed lay worker² who (1) was in whole-time stipendiary ecclesiastical service³ (being service which is pensionable service⁴ for the purposes of the pensions regulations) within the Provinces of Canterbury (including the Diocese in Europe) or York at the relevant date⁵ or at any time during the period of six months immediately preceding that date, (2) at the relevant date has performed a period of such ecclesiastical service of not less than five years or a succession of periods of such ecclesiastical service (whether with or without intervals) amounting in aggregate to not less than five years, (3) within the period commencing six months immediately before the relevant date and ending ten years immediately after that date has ceased to be in such ecclesiastical service consequent on his resigning therefrom, (4) within the period of ten years immediately after the relevant date has made a declaration in the prescribed form⁶ stating that he would not have resigned but for his opposition to the promulgation of the relevant canon, (5) has not attained the retiring age⁷, and (6) is not in receipt of a pension under the pensions regulations, is entitled, on application⁸, to participate in any church housing scheme⁹ and receive from the Church of England Pensions Board (the board) financial benefit consisting of a resettlement grant¹⁰ and periodical payments¹¹.

1 I.e. any bishop, priest or deacon of the Church of England: Ordination of Women (Financial Provisions) Measure 1993 s 11(1).

2 I.e. a person who has been admitted by a bishop as a lay worker of the Church of England and who has been authorised by a bishop by licence to serve as such a worker: *ibid* s 11(1).

3 'Stipendiary ecclesiastical service' has the same meaning as in the pensions regulations: *ibid* s 11(2). 'Pensions regulations' means regulations for the time being in force under the Clergy Pensions (Amendment) Measure 1972 s 6 (see PARA 738): s 11(1).

4 'Pensionable service' has the same meaning as in the pensions regulations: 1993 Measure s 11(2).

5 'Relevant date' means the date on which the relevant canon is promulgated: *ibid* s 11(1). 'Relevant canon' means the canon of the Church of England enabling a woman to be ordained to the office of priest: s 11(1).

6 As to the prescribed form, see *ibid* Schedule. A declaration must be signed and dated by the person making it in the presence of another person, who must also sign it, and a copy of it must be sent to the bishop of the diocese concerned: *ibid* s 7(1).

7 'Retiring age' has the same meaning as in the pensions regulations: *ibid* s 11(2).

8 An application must be made in such manner as the board may determine, and where a person is incapacitated from making an application himself the board may authorise some other person to make it on his behalf: *ibid* s 7(2).

9 'Church housing scheme' means any scheme operated for the time being by the Church of England Pensions Board under the Clergy Pensions Measure 1961 s 26 (see PARA 752) for the purpose of providing residences to retired clergy and church workers: 1993 Measure s 11(1). The 1961 Measure s 26 and any church housing scheme apply to qualifying clerks in holy orders, deaconesses or licensed lay workers as they do to retired clerks in holy orders and retired church workers: 1993 Measure s 2.

10 A resettlement grant is a single payment of an amount equal to three-tenths of the national minimum stipend for the year in which application for the grant was made or such greater amount as the board may, with the concurrence of the Church Commissioners, determine: *ibid* s 3(1). 'National minimum stipend', in relation to any year, means the national minimum stipend recommended for the stipends of clergymen of incumbent status for that year in the Annual Report of the commissioners as the Central Stipends Authority: *ibid* s 11(1). Such a grant must not be paid unless the board is satisfied that the applicant was, immediately before the material time, residing in accommodation made available to him in order to enable him to undertake the service from which he has resigned: *ibid* s 3(2).

11 *Ibid* s 1(1), (2). Periodical payments must be paid monthly to the applicant during a period expiring at the end of (a) such number of months immediately following the material time as results from adding together (i) one month for each year or part of a year during which the applicant has served in whole-time stipendiary ecclesiastical service, and (ii) one month for each year or part of a year which has passed before the material time since the applicant attained the age of forty years, or (b) 36 months immediately following the material time, whichever is the greater, provided that where an applicant has at the material time attained the age of 50 years the payments must continue, if they would otherwise cease, until he attains an age within five years of the retiring age: *ibid* s 4(1). 'Material time' in relation to a person who resigns from stipendiary ecclesiastical service is the time when he ceases to be in such service: *ibid* s 11(1). Section 4(1) may be amended by regulations: *ibid* s 4(4).

The payments cease to be payable when a person attains the retiring age, or if he receives a pension under the pensions regulations before attaining that age, on the date on which the pension is first paid, or if he re-enters whole-time stipendiary ecclesiastical service on the date of the re-entry: *ibid* s 4(2). Subject to any reduction on account of other employment (see *PARA 657C.2*) each monthly payment must be of an amount equal to one-twelfth of (a) in the first period of twelve months, the national minimum stipend for the year in which the payment falls to be made, (b) in the second period of twelve months, three-quarters of the national minimum stipend for the year in which the payment falls to be made, and (c) thereafter, two-thirds of the national minimum stipend for the year in which the payment falls to be made: *ibid* s 4(3). Where a pension is payable under the pensions regulations to a person who has received periodical payments, the Church Commissioners must augment the pension so as to ensure that it is at the same rate as it would have been had the period during which the periodical payments were made been one of pensionable service for the purposes of the regulations: *ibid* s 9(1). The entitlement of any person to receive a pension under the pensions regulations where he retires before attaining the retiring age is not affected: *ibid* s 9(2).

The system of benefits established by the above provisions and those in *PARA 657B.2* is to be administered by the board and financed by the Church Commissioners out of their general fund: see *ibid* s 8.

2. Discretionary payments and reduction of periodical payments

The Church of England Pensions Board (the board) may, on application¹ being made to it by any person, provide such financial benefit to him by way of periodical payments, grant or loan or otherwise as it thinks fit². In the case of an applicant not entitled to benefit under the foregoing provisions³, the board must not make any payment unless it is satisfied that (1) within the period of ten years immediately after the relevant date⁴, the applicant or any person on whom the applicant is (or was immediately before that person's death) dependent (a) has ceased to hold an office or employment or to be a member of a religious community consequent on his resigning therefrom, and (b) has made a declaration in the prescribed form⁵ stating that he would not have resigned but for his opposition to the promulgation of the relevant canon⁶, and (2) in consequence the applicant has suffered or will suffer financial hardship⁷. For the purpose of determining whether any financial benefit should be provided under these provisions and, if so, the amount and form of the benefit, the board must have regard to (1) the age and other personal circumstances of the applicant, (2) any special need of the applicant in respect of housing, (3) any special need of the applicant in respect of training for suitable employment, (4) the extent to which the applicant provides or might reasonably be expected to provide financial support for any person dependent on him, and (5) all other relevant circumstances of the applicant's case⁸.

If any person who is applying for or receiving periodical payments⁹ accepts any office or employment, the board may refuse the application or may suspend or reduce the periodical payments to take account of the emoluments of or other benefits which arise from the office or employment¹⁰. The board must not exercise these powers in a manner whereby the total annual amount of the emoluments in question and the periodical payments (if any) would be less than the national minimum stipend¹¹. It is the duty of every person who applies for or receives

periodical payments to disclose to the board any office or employment which has been accepted by him and the terms thereof, and if he fails to do so and it appears to the board that in consequence it has made periodical payments which otherwise it would not have made or periodical payments in excess of those it would otherwise have made, it may direct the repayment of the amount of the payments or excess or such part thereof as it thinks just, and that amount is recoverable as a debt due to the board¹².

1 An application must be made in such manner as the board may determine, and where a person is incapacitated from making an application himself the board may authorise some other person to make it on his behalf: Ordination of Women (Financial Provisions) Measure 1993 s 7(2).

2 Ibid s 5(1).

3 Ie an applicant to whom ibid s 1 (see PARA 657B.1) does not apply.

4 For the meaning of 'relevant date', see PARA 657B.1 NOTE 5.

5 As to the prescribed form, see ibid Schedule. A declaration must be signed and dated by the person making it in the presence of another person, who must also sign it, and a copy of it must be sent to the bishop of the diocese concerned: ibid s 7(1).

6 For the meaning of 'relevant canon', see PARA 657B.1 NOTE 5.

7 Ibid s 5(2).

8 Ibid s 5(3).

9 Ie under ibid s 1(1) (PARA 657B.1) or s 5(1).

10 Ibid s 6(1).

11 Ibid s 6(2). For the meaning of 'national minimum stipend', see PARA 657B.1, NOTE 10.

12 Ibid s 6(3).

3. Appeals

An applicant for any benefit under the foregoing provisions who is aggrieved by a determination of the Church of England Pensions Board (the board) in carrying out its functions may appeal against the determination to a tribunal¹. On any appeal the tribunal may affirm the board's determination or make any other determination which could have been made by the board². If the board's determination is not affirmed it must give effect to the tribunal's determination³. In respect of any determination made by the board as to discretionary payments, the tribunal must not vary the board's determination unless it is satisfied that the board has exercised its discretion on a basis on which no reasonable determination could have been made, or has failed to take into account some material matter, or has taken into account some irrelevant matter, where in either case in acting properly the determination of the board would or might have been significantly different⁴.

Rules have been made regulating the procedure and practice in proceedings on an appeal⁵.

1 Ordination of Women (Financial Provisions) Measure 1993 s 10(1). The tribunal must consist of five persons nominated by the chairman of the House of Bishops, the chairman of the House of Clergy and the chairman of the House of Laity acting jointly from a panel of twelve members of the general Synod selected by the Appointments Committee: s 10(4); Church of England (Transfer of Functions) Order 1998, SI 1998/1715. As to the Appointments Committee see PARA 383A.

2 1993 Measure s 10(2).

3 Ibid s 10(2).

4 Ibid s 10(3). Section 10(3) does not apply where the tribunal considers that, in all the circumstances of the case, not to vary the board's determination would or might result in an injustice to the applicant and would or might cause significant financial hardship: s 10(3) proviso.

5 See the Ordination of Women (Financial Provisions) (Appeals) Rules 1993, SI 1993/2847, made by the Standing Committee of the General Synod under the 1993 Measure s 10(5). Functions of the standing committee under s 10(5), (7) are transferred to the Business Committee (as to which see PARA 383B): SI 1998/1715.

4. Supplementary provisions

A motion for the final approval of a Measure which amends or repeals any provision of the Ordination of Women (Financial Provisions) Measure 1993 is not deemed to be carried unless it receives the assent of a majority in each House of the General Synod of not less than two-thirds of those present and voting¹. The 1993 Measure extends to the whole of the provinces of Canterbury and York except the Channel Islands, but may be applied to the Channel Islands².

1 Ordination of Women (Financial Provisions) Measure 1993 s 12.

2 Ibid s 13. As to the application of the Measure to the Channel Islands see the Women Priests (Channel Islands) Order 1999, SI 1999/1317.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/658. Disqualifications for ordination.

658. Disqualifications for ordination.

No person may be admitted into holy orders who is suffering or who has suffered from any physical or mental infirmity which in the bishop's opinion will prevent him from ministering the Word and sacraments or from performing the other duties of the minister's office¹. Nor may any person be admitted into holy orders who has remarried and, the wife of that marriage being alive, has a former wife still living², or who is married to a person who has been previously married and whose former husband is still living³. Bastardy is no longer a bar to ordination⁴. It appears that the ancient view that certain physical impediments, such as blindness, were a bar to ordination has fallen into disuse⁵.

1 Revised Canons Ecclesiastical, Canon C4 para 2.

2 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 9 (1); Revised Canons Ecclesiastical, Canon C4 para 3.

3 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 9 (2); Revised Canons Ecclesiastical, Canon C4 para 3.

4 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 8; Revised Canons Ecclesiastical, Canon C4 para 4. See also 1 Bl Com (14th Edn) 459. It was formerly considered necessary to obtain a faculty from the Archbishop of Canterbury before an illegitimate person could be ordained, and it was thought that he could not be consecrated bishop: see the Report of the Ecclesiastical Committee on the Clergy (Ordination and Miscellaneous Provisions) Measure 1964.

5 See eg *Kensit v Dean and Chapter of St Paul's* [1905] 2 KB 249 at 256, 257, DC. This would presumably apply also to consecration as bishop.

UPDATE

658 Disqualifications for ordination

TEXT AND NOTES 2, 3--An archbishop may now grant a faculty in pursuance of a canon made by the General Synod under the 1964 Measure s 9 for the purpose of admitting such a person into Holy Orders: 1964 Measure s 9; Clergy (Ordination) Measure 1990 s 1. This power may not be delegated: 1978 Measure ss 10, 11; 1990 Measure s 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/659. Letters dimissory.

659. Letters dimissory.

No person may be admitted into holy orders by any bishop other than the bishop of the diocese in which he is to exercise his ministry unless either he brings with him letters dimissory from the bishop of that diocese¹ or he is a fellow, or is a person in right as a fellow, in any college or hall in the University of Oxford or of Cambridge².

1 Revised Canons Ecclesiastical, Canon C5 para 4.

2 Ibid Canon C5 para 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/660. Declaration and oaths.

660. Declaration and oaths.

The General Synod may provide by canon with respect to the obligations of the clergy, deaconesses¹ and lay officers² of the Church of England to assent or subscribe to the doctrine of that Church and the forms of assent or subscription, which may include an explanatory preface³. Every such canon must be such as, in the synod's opinion, is neither contrary to nor indicative of any departure from the doctrine of the Church of England in any essential matter⁴.

Every person about to be ordained priest or deacon must, before ordination⁵, in the presence of the bishop by whom he is to be ordained, make and subscribe in the prescribed form a declaration of assent, affirming his loyalty to the church's inheritance of faith as his inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making Christ known to those in his care; and declaring his belief in the faith which is revealed in the holy scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England (namely the Thirty-Nine Articles⁶, the Book of Common Prayer⁷ and the Ordering of Bishops, Priests and Deacons) bear witness; and he promises to use in public prayer and the administration of the sacraments only the forms of service which are authorised or allowed by canon⁸.

He must also take and subscribe the oath of allegiance⁹ and, in the presence of the bishop of the diocese by whom he is to be ordained or his commissary, take the oath of canonical obedience¹⁰.

One of the archdeacons or his deputy or such other persons as by ancient custom have the right to do so must present to the bishop every person who is to be ordained¹¹, and the priests taking part, together with the bishop, lay their hands upon the head of every person who receives the order of priesthood¹².

1 As to deaconesses, see PARA 759 et seq post.

2 'Lay officers' means licensed lay workers (see PARA 766 post), readers (see PARA 762 et seq post), lay judges of consistory or provincial courts (see PARA 1275 et seq, 1286 post), and lay holders of other offices admission to which is for the time being regulated by canon: Church of England (Worship and Doctrine) Measure 1974, s 2 (2).

3 Ibid s 2 (1).

4 Ibid s 4 (1). The synod's final approval of any such canon conclusively determines that the synod is of that opinion with respect to the matter approved: s 4 (2). As to the construction of 'the doctrine of the Church of England', see s 5 (1), and PARA 935 note 10 post.

5 No oath may be administered during the actual service: Clerical Subscription Act 1865, s 11. This provision does not apply to the oath of canonical obedience: s 12.

6 The Thirty-Nine Articles are agreeable to the Word of God and may be assented to with a good conscience by all members of the Church of England: Revised Canons Ecclesiastical, Canon A2.

7 The doctrine contained in the Book of Common Prayer is agreeable to the Word of God: ibid Canon A3 para 1. The forms of worship contained in it, forasmuch as it is not repugnant to the Word of God, may be used by all members of the Church of England with a good conscience: Canon A3 para 2.

8 Ibid Canon C15 para 1 (1), (4) (substituted by Amending Canon No. 4). The preface preceding the declaration set out in Canon C15 para 1 (1), must be spoken by the bishop or other person in whose presence it is made, before the declaration is made: Canon C15 para 1 (2) (substituted by Amending Canon No. 4).

9 Clerical Subscription Act 1865, s 4; Promissory Oaths Act 1868, ss 2, 8, 9; Revised Canons Ecclesiastical, Canon C13 para 1. For the form of the oath, see PARA 464 note 5 ante. As to overseas clergymen, see PARA 667 post.

10 Ibid Canon C14 para 3; Clerical Subscriptions Act 1865, s 12. See *Huntley's Case* (1626) 4 Burn's Ecclesiastical Law 27; *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411; *Tuckness v Alexander* (1863) 32 LJ Ch 794 at 806; *Combe v De la Bere* (1881) 6 PD 157; *Bishop of St Albans v Fillingham* [1906] P 163 at 185; and see Sparrow Simpson, Dispositions 209-225; Clerke, Praxis in Ecclesiasticus xci; Gib Cod 810.

Although Revised Canons Ecclesiastical, Canon C14 para 3, clearly states that the oath is of obedience to the bishop of the diocese by whom the candidate is to be ordained, it is unlikely that it is intended that at an ordination under letters dimissory (see PARA 659 ante) the oath should be other than to the bishop who issued the letters. According to the ancient usage of the Church and realm of England the inferior clergy who have received authority to minister in any diocese owe canonical obedience on all things lawful and honest to the bishop: Canon C1 para 3.

11 Ibid Canon C3 para 3.

12 Ibid Canon C3 para 4.

UPDATE

660 Declaration and oaths

TEXT--A declaration of assent may not be dispensed with by canon: Church of England (Miscellaneous Provisions) Measure 1976 s 1(2).

NOTE 9--Now 1868 Act s 9; Statute Law (Repeals) Act 1981.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/661. Corrupt ordination.

661. Corrupt ordination.

If any person directly or indirectly receives or agrees to receive any money or profit for effecting or promising the ordination of any clerk, beyond the lawful fees¹, he is liable, on summary conviction, to a fine not exceeding £100². The clerk so corruptly ordained is similarly liable on summary conviction, and if within seven years after his corrupt ordination he takes any benefice or other ecclesiastical preferment, it will, immediately after his admission to it, become void as if he were dead². A bishop who takes money for admitting to holy orders is guilty of simony and is liable to deprivation³.

1 Annual fees payable to bishops' legal secretaries and diocesan registrars include payment for work done by them in connection inter alia with ordination: Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, App. I (i), made under the Ecclesiastical Fees Measure 1962, s 1.

2 Simony Act 1588, s 9; Common Informers Act 1951, s 1, Schedule; see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 2.

3 *Bishop of St David's v Lucy* (1699) Carth 484. As to declarations against simony, see PARA 464 ante, 834 post.

UPDATE

661 Corrupt ordination

NOTE 1--1962 Measure replaced: Ecclesiastical Fees Measure 1986.

NOTE 2--Now 1588 Act s 9; Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/662. Letters of orders.

662. Letters of orders.

After ordination, letters of orders¹ under the bishop's seal are issued to the person ordained as a record of the transaction. He may be required to produce them at the visitation of the bishop or archdeacon in whose diocese or archdeaconry he is officiating². They are not a deed, however, and confer nothing, since the ordination is complete without them³.

¹ The letters of orders must be exhibited at the ordination: Revised Canons Ecclesiastical, Canon C6 para 2 a.

² Lyndwood, gloss on *Primis Admissionibus* 225; *Gib Cod* 959. See also Revised Canons Ecclesiastical, Canon C18 para 4 (amended by Amending Canon No. 1).

³ *R v Morton* (1873) LR 2 CCR 22. To fabricate letters of orders is forgery at common law (*R v Etheridge* (1901) 19 Cox CC 676) and would now fall within the provisions of the Forgery Act 1913, s 4 (1); Criminal Law Act 1967, s 10 (2), Sch. 3, Part III: see CRIMINAL LAW, EVIDENCE AND PROCEDURE.

UPDATE

662 Letters of orders

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--Offence of forgery at common law abolished and 1913 Act repealed: Forgery and Counterfeiting Act 1981 ss 13, 30, Schedule Pt I. See now Pt I (ss 1-13), CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 346-352.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/A. ORDINATION/663. Indelibility of orders.

663. Indelibility of orders.

No person who has been admitted to the order of bishop, priest or deacon can ever be divested of the character of his order. However, by legal process¹, he may voluntarily relinquish the exercise of his orders² and use himself as a layman³ or, by legal and canonical process, he may be deprived⁴ of the exercise of his orders or finally deposed⁵ from them⁶.

1 See PARA 686 post.

2 See PARA 687 post.

3 Revised Canons Ecclesiastical, Canon C1 para 2; *Barnes v Shore* (1846) 8 QB 640.

4 See PARAS 1373, 1374 post.

5 See PARA 1375 post.

6 Revised Canons Ecclesiastical, Canon C1 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/B. DEACONS AND PRIESTS/664. Deacon's functions.

B. DEACONS AND PRIESTS

664. Deacon's functions.

The functions of a deacon in the church where he is appointed to serve are to assist the priest in divine service, and specially when he administers the Holy Communion, to help him in its distribution, to read the holy scriptures and homilies in the church, to instruct the youth in the catechism, to baptise infants in the absence of the priest, to preach, if admitted to do so by the bishop; and, where provision is so made, to search for the sick, poor and impotent people of the parish and report details of them to the incumbent with a view to their being relieved by the alms of the parishioners and otherwise¹. A deacon may also perform the burial service and, in law, solemnise marriage²; but canonically, since a blessing is given, marriages should be solemnised by those in priest's orders.

Before a deacon can be admitted to priest's orders he must continue in office as a deacon for a whole year, unless the bishop for reasonable causes decides otherwise, in order that he may become perfect and expert in matters of ecclesiastical administration; and, if he is found faithful and diligent in the office, he may then be admitted to the priesthood³. However, without a faculty from the Archbishop of Canterbury, no person may be ordained both deacon and priest on the same day⁴; and no person may be ordained priest unless he is at least twenty-four years of age, unless he is over twenty-three and has a faculty from the Archbishop of Canterbury⁵.

1 Book of Common Prayer, Form and Manner of Making Deacons. As to the exercise of his ministry, see also the Revised Canons Ecclesiastical, Canon C8, and PARA 666 post.

2 Watson, Clergyman's Law (4th Edn) 146; *R v Millis* (1844) 10 Cl & Fin 534 at 717, 746, 750, 786, 810, 859, 860, HL.

3 Book of Common Prayer, Rubric at the end of the Form and Manner of Making of Deacons; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 4 (2) (repealed); Revised Canons Ecclesiastical, Canon C3 para 8. During a vacancy of the see, the bishop's power is exercisable by the archbishop of the province in which the diocese is situated: Canon C3 para 8. See also Canon C6 paras 2, 3, and PARA 657 note 6 ante.

4 Ibid Canon C3 para 7.

5 Ibid Canon C3 para 6.

UPDATE

664 Deacon's functions

TEXT AND NOTE 5--The maximum age for appointment to the office of incumbent of a benefice or vicar in a team ministry or a guild church is 69: Ecclesiastical Offices (Age Limit) Measure 1975 s 1(1). The holder of such an office, other than one holding office on 1 January 1976, must retire at 70: s 1(3). The diocesan bishop or the Bishop of London as appropriate may authorise continuance in office for up to two years: s 3; Bishops (Retirement) Measure 1986 s 11(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/B. DEACONS AND PRIESTS/665. Priest's functions.

665. Priest's functions.

By his ordination a priest receives authority to preach the Word of God and to administer the holy sacraments¹ in the congregation where he is lawfully appointed to discharge those functions². No person is capable of being admitted to any benefice or other ecclesiastical preferment or dignity before he has been episcopally ordained priest³.

1 Ie baptism and the Lord's Supper: Articles of Religion 25.

2 Book of Common Prayer, Form and Manner of Ordering of Priests; Watson, Clergyman's Law (4th Edn) 147.

3 Act of Uniformity 1662, s 10; Statute Law (Repeals) Act 1969, s 1, Schedule, Part II; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/B. DEACONS AND PRIESTS/666. Authority to officiate.

666. Authority to officiate.

A minister duly ordained priest or deacon and, where required under the provisions relating to extraneous and overseas orders¹, holding a licence or permission from the relevant archbishop, may officiate in any place only after he has received authority to do so from the appropriate bishop or other Ordinary². The bishop confers such authority by instituting the minister to a benefice³, by admitting him to serve within his diocese by licence under his hand and seal⁴, or by giving him written permission to officiate⁵. With certain exceptions⁶ no minister who has such authority may exercise his ministry in any place in which he does not have the cure of souls without the permission of the minister who has such cure⁷.

1 See the Revised Canons Ecclesiastical, Canon C8 para 5, and PARA 669 post.

2 Ibid Canon C8 paras 1, 2. However, the minister having the cure of souls of a church or chapel, or the sequestrator when the cure is vacant, or the dean or provost and canons residentiary of any cathedral or collegiate church may allow a minister as to whose character and qualifications they are satisfied to minister within their church or chapel for not more than ten days within three months without reference to the bishop or other Ordinary, and that minister must sign the services register when he officiates: Canon C8 para 2a. Further, no member of the chapter of a cathedral church is debarred from performing his duties and exercising his ministry within the diocese merely by lack of authority from the bishop (Canon C8 para 2b), and any minister who has a licence to preach throughout the province from the archbishop or throughout England from the University of Oxford or Cambridge may do so without any further authority from the bishop (Canon C8 para 2c). See also PARA 691 post. As to the bishop's right to officiate, see PARA 690 post.

3 See PARA 689 et seq post.

4 See PARA 706 et seq post. The bishop's licence takes the form either of a general licence to preach or otherwise to minister (subject to the Revised Canons Ecclesiastical, Canon C8 para 4: see infra) in any parish or ecclesiastical district, or of a licence to perform some particular office: Canon C12 para 1.

5 Ibid Canon C8 para 3.

6 Thus he may minister at the homes of persons on the electoral roll of the parish where he serves and to the extent authorised by the Extra-Parochial Ministry Measure 1967 (see PARA 690 post), or in an institution in which he is licensed to officiate as provided by that Measure and by the Revised Canons Ecclesiastical, Canon B41 (see PARAS 731, 732 post), without that permission: Canon C8 para 4.

7 Ibid Canon C8 para 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEOUS AND OVERSEAS ORDERS/667. Ordination for service overseas.

C. EXTRANEOUS AND OVERSEAS ORDERS

667. Ordination for service overseas.

Any bishop of a diocese in the province of Canterbury or York, on receiving a request from the bishop of an overseas diocese that he should ordain as priest or deacon a person named in the request with a view to his exercising his ministry in that overseas diocese, may ordain that person in pursuance of the request¹. Where any person to be so ordained is not a citizen of the United Kingdom and Colonies² the bishop who is to ordain him may dispense with the taking of the oath of allegiance³. Where it is desired that a person so ordained should exercise his ministry for a limited period in the province of Canterbury or York before proceeding overseas, the archbishop may grant him a temporary permission to officiate⁴.

1 Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 5 (1); Revised Canons Ecclesiastical, Canon C5 para 3. The bishop must indorse on the letters of orders that the ordination was under the section in pursuance of the request of the overseas bishop concerned: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 5 (1).

2 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 16 et seq.

3 Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 5 (2); Revised Canons Ecclesiastical, Canon C13 para 2.

4 Overseas and Other Clergy (Ministry and Ordination) Measure 1967, ss 1, 5 (3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEIOUS AND OVERSEAS ORDERS/668. Restrictions on overseas bishops.

668. Restrictions on overseas bishops.

It is an offence¹ for an overseas bishop² to perform any episcopal functions (including ordination³) in a diocese in the province of Canterbury or York, except at the request and by the commission in writing of the bishop of that diocese and with the consent and licence in writing of the archbishop of the province⁴.

1 Is an ecclesiastical offence for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 4 (3).

2 For the meaning of 'overseas bishop', see *ibid* s 6 (1), and PARA 474 note 1 ante.

3 See *ibid* s 4 (1), and PARA 474 ante.

4 *Ibid* s 4 (1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEOUS AND OVERSEAS ORDERS/669. Restrictions on overseas clergy.

669. Restrictions on overseas clergy.

It is an offence¹ for an overseas clergyman² to officiate as priest or deacon in the province of Canterbury or York otherwise than in accordance with a permission granted by the relevant archbishop³. Any overseas clergyman desiring so to officiate may apply⁴ to the archbishop for written permission to do so⁵. The archbishop may grant the permission⁶, either without limitation of time or for a specified time⁷, and then, subject to any such limitation, the overseas clergyman possesses all such rights and advantages and is subject to all such duties and liabilities as he would have possessed and been subject to if he had been ordained by the bishop of a diocese in the province of Canterbury or York otherwise than at the request of the bishop of an overseas diocese⁸.

If such an overseas clergyman is not a citizen of the United Kingdom and Colonies⁹ and is to be admitted to a benefice, perpetual curacy, lectureship or preachership¹⁰ the bishop by whom he is to be admitted may dispense with the taking of the oath of allegiance¹¹.

1 It is an ecclesiastical offence for which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 1 (6). This does not apply to any overseas clergyman who as a deacon has been ordained priest by the bishop of a diocese in the Province of Canterbury or York otherwise than under s 5: s 1 (7).

2 'Overseas clergyman' means a clergyman who has been ordained priest or deacon by an overseas bishop or under ibid s 5: s 6 (1). See PARA 667 ante.

3 Ibid s 1 (6); Revised Canons Ecclesiastical, Canon C8 para 5. It is also an ecclesiastical offence for any clergyman knowingly to allow such an offence to be committed in any church in his charge: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 1 (6).

4 Application must be made on a form approved by the Archbishops of Canterbury and York: ibid s 1 (5).

5 Ibid s 1 (1).

6 The permission must be registered in the provincial registry: ibid s 1 (4).

7 A further permission, either temporary or permanent, may be granted by the archbishop of the same province: ibid s 1 (3).

8 Ibid s 1 (2). See PARA 667 ante. A person ordained in pursuance of such a request may be granted temporary permission to exercise his ministry in the province of Canterbury or York before going overseas: s 5 (3). See also Revised Canons Ecclesiastical, Canon C17 para 6.

9 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 16 et seq.

10 It is any other office to which the Clerical Subscription Act 1865, s 5, applies.

11 Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 2; Revised Canons Ecclesiastical, Canon C13 para 2.

UPDATE

669 Restrictions on overseas clergy

TEXT AND NOTES--It is lawful for persons admitted to Holy Orders by a bishop of the Church of Ireland, whether or not they hold or have held any benefice or preferment in England, to officiate in England in a church or chapel belonging to the Church of

England, if invited to do so by the minister having the cure of souls of the church or chapel, without notifying the bishop of the diocese in which the church or chapel is situate for the same period and subject to the same conditions as would be applicable to them if they had been admitted to Holy Orders by the bishop of a diocese in the Church of England: Church of England (Miscellaneous Provisions) Measure 1995 s 1.

TEXT AND NOTE 8--Where any priest or deacon of a United Church (ie the Church of South India, Church of North India, Church of Pakistan and the Church of Bangladesh) is granted permission under 1967 Measure to officiate for a limited period as a priest or deacon in the province of Canterbury or York, nothing in 1967 Measure s 1(2) inhibits that priest or deacon from exercising his ministry in another church to which Church of England (Ecumenical Relations) Measure 1988 (see PARA 1186A) applies in accordance with the terms of the relationship between that United Church and that other church: 1988 Measure s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEOUS AND OVERSEAS ORDERS/670. Restrictions on Scottish clergy.

670. Restrictions on Scottish clergy.

A person ordained by a bishop of the Episcopal Church in Scotland, not holding or having held a benefice or other ecclesiastical preferment in England or Ireland, is not entitled to be admitted or instituted to any benefice or other ecclesiastical preferment in England without the consent and approbation of the bishop of the diocese in which it is situated, which the bishop may refuse without assigning any reason¹. If he seeks to be admitted or instituted to any such benefice or preferment, or to be licensed to any curacy, he must, before being admitted, instituted or licensed, make and subscribe before the bishop every declaration and subscription required by law on ordination by a bishop of the Church of England¹.

1 Episcopal Church (Scotland) Act 1864, s 5. As to these declarations etc., see PARA 660 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEIOUS AND OVERSEAS ORDERS/671. Bishops of churches not being in communion.

671. Bishops of churches not being in communion.

A bishop consecrated in a church not in communion with the Church of England, whose orders are recognised and accepted by the Church of England¹, may, on the request and by the written commission of the bishop of a diocese in the province of Canterbury or York and with the written consent and licence of the archbishop of the province, ordain persons² and perform other episcopal functions in that diocese³.

1 Any question which arises as to the fulfilment of these requirements is to be determined by the Archbishops of Canterbury and York, whose decision is conclusive: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 6 (2). See PARA 313 ante.

2 See *ibid* s 4 (1), and PARA 474 ante.

3 *Ibid* s 4 (1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(i) Orders/C. EXTRANEIOUS AND OVERSEAS ORDERS/672. Clergy of churches not being in communion.

672. Clergy of churches not being in communion.

The restrictions against officiating as a priest or deacon in the province of Canterbury or York apply in a similar manner to any person who has been episcopally ordained priest or deacon in a church not in communion with the Church of England, whose orders are recognised and accepted by the Church of England¹ as an overseas clergyman².

1 Any question which arises whether a church is in communion with the Church of England or whether the orders of any church are recognised and accepted by the Church of England is to be determined by the Archbishops of Canterbury and York, whose decision is conclusive: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 6 (2). See PARA 313 ante.

2 Ibid s 3. See PARA 667 ante. For the meaning of 'overseas clergyman', see PARA 669 note 2 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/A. PRIVILEGES/673. Protection of clergymen performing clerical duties.

(ii) Status

A. PRIVILEGES

673. Protection of clergymen performing clerical duties.

Any person is guilty of a non-arrestable offence who (1) by threats or force obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister from celebrating divine service or otherwise officiating in any church, meeting house or other place of divine worship or in the lawful burial of the dead in any churchyard or other burial place; or (2) strikes or offers violence to, or arrests upon any civil process, any clergyman or other minister while so engaged, or to the knowledge of the offender about to be engaged in such duties, or while going to or returning from the performance of such duties¹. The punishment for this offence is imprisonment for any term not exceeding two years¹.

¹ See PARA 1049 post. As to misbehaviour in church, see PARA 1048 et seq post. As to privilege from arrest, see 12 Co Rep 100. As to priests in ordinary of the chapels royal, see PARA 732 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/A. PRIVILEGES/674. Conduct as a matter of public interest.

674. Conduct as a matter of public interest.

A sermon by a clergyman, as the holder of an office of a public nature, is a matter of public interest on which fair public discussion and criticism are permissible under the law of libel¹. So also is a dispute between an incumbent and his churchwarden as to what he allows to be done during divine service and the uses to which he puts the church or vestry². The conduct of a clergyman with reference to a special charity in his parish, however, is not such a matter of public interest³.

1 *Gathercole v Miall* (1846) 15 M & W 319; *Kelly v Sherlock* (1866) LR 1 QB 686; *Botterill v Whytehead* (1874) 41 LT 588; *Dudgeon v Forbes* 1833 11 Sh (Ct of Sess) 1014; *Adam v Allan* 1841 3 Dunl (Ct of Sess) 1058 at 1061; *Magrath v Finn* (1877) IR 11 CL 152.

2 *Kelly v Tinling* (1865) LR 1 QB 699.

3 *Gathercole v Miall* (1846) 15 M & W 319.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/A. PRIVILEGES/675. Privilege from arrest.

675. Privilege from arrest.

The clergy are privileged from arrest on civil process while going to, attending and returning from an episcopal visitation¹ or divine service or other clerical duties².

1 *McGeath v Geraghty* (1866) 15 WR 127; *Blane v Geraghty* (1866) 15 WR 133.

2 See PARA 673 ante, 1049 post, See also PARA 732 note 2 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/A. PRIVILEGES/676. Privileges as to execution and distress.

676. Privileges as to execution and distress.

Although a clergyman may be made bankrupt or have a judgment entered against him for debts, possession of the property and profits of any benefice which he holds can only be obtained under a warrant of sequestration issued by the bishop¹.

¹ 2 Co Inst 4; see PARA 892 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/A. PRIVILEGES/677. Exemption from secular service.

677. Exemption from secular service.

A man in holy orders, a regular minister of any religious denomination and a vowed member of any religious order living in a monastery, convent or other religious community are ineligible to serve on juries¹ and, generally, clerks in holy orders are exempt from the obligation to serve in any secular office or capacity².

1 Juries Act 1974, s 1, Sch. 1, Part I, Group C. In *Beecher's Case* (1577) 4 Leon 190 a person who was ordained after being impanelled as a juryman was compelled to serve on the jury.

2 Co Litt 96a; 2 Co Inst 3. See also PARA 680 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/B. DUTIES/678. Duties relating to services and studies.

B. DUTIES

678. Duties relating to services and studies.

Every bishop, priest and deacon is under an obligation, not being let by sickness or some other urgent cause, to say daily Morning and Evening Prayer, either privately or openly, and to celebrate Holy Communion, or be present at it, every Sunday and other principal feast day¹. He must also be diligent in daily prayer and intercession, in examination of his conscience and in the study of holy scripture and such other studies as appertain to his ministerial duties¹.

¹ Revised Canons Ecclesiastical, Canon C26 para 1; Book of Common Prayer, rubric following the Preface 'Concerning the Service of the Church'.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/B. DUTIES/679. Duties relating to dress.

679. Duties relating to dress.

The apparel of a bishop, priest or deacon must be suitable to his office and, except for purposes of recreation and other justifiable reasons, must be such as to be a sign and mark of his holy calling and ministry both to those committed to his spiritual charge and to others¹.

¹ Revised Canons Ecclesiastical, Canon C27.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/680. Incapacity to sit in House of Commons.

C. DISABILITIES

680. Incapacity to sit in House of Commons.

A priest or deacon cannot be elected or serve as a member of the House of Commons¹, and is liable to forfeit the sum of £500 for every day during which he presumes to sit or vote in that House². This disability extends to all persons episcopally ordained to the office of priest or deacon, whether according to the order of the Church of England or by other forms³. A clergyman is not disqualified for membership of a local authority⁴.

1 House of Commons (Clergy Disqualification) Act 1801, s 1. The election of a priest or deacon is void, and upon ordination as a priest or deacon a member's seat becomes void: s 2. These provisions apply also to a minister of the Church of Scotland (ss. 1, 2), and similar provisions apply to a person in holy orders in the Church of Rome (Roman Catholic Relief Act 1829, s 9).

2 House of Commons (Clergy Disqualification) Act 1801, s 2.

3 *Re MacManaway, Re House of Commons (Clergy Disqualification) Act 1801* [1951] AC 161, PC. As to relinquishment of orders, see PARA 686 post.

4 Thus he is not mentioned in the Local Government Act 1972, s 80.

UPDATE

680 Incapacity to sit in House of Commons

TEXT AND NOTES 1-3--Replaced. A person is not disqualified from being or being elected as a member of the House of Commons merely because he has been ordained or is a minister of any religious denomination; but a person is disqualified from being or being elected as a member of that House if he is a lord spiritual: House of Commons (Removal of Clergy Disqualification) Act 2001 s 1(1), (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/681. Restrictions on mode of life.

681. Restrictions on mode of life.

A clergyman may not give himself to such occupations, habits or recreations as do not befit his sacred calling or may be detrimental to the performance of the duties of his office or tend to be a just cause of offence to others¹. He must at all times be diligent to frame and fashion his life, and that of his family, according to the doctrine of Christ, and to make himself and them, as much as in him lies, wholesome examples and patterns to the flock of Christ¹.

¹ Revised Canons Ecclesiastical, Canon C26 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/682. Restrictions on farming.

682. Restrictions on farming.

A clergyman who holds any cathedral preferment, benefice, curacy or lectureship, or who is licensed or otherwise allowed to perform the duties of any ecclesiastical office, must not take to farm for life, or for a term of years or at will, more than 80 acres of land for the purpose of his own occupation, user or cultivation without a special written permission from the bishop, specifying the number of years, not exceeding seven, for which the permission is given; and he will forfeit for every acre so taken to farm without permission, above 80 acres, the sum of £2 for every year in which it is so occupied, used or cultivated by him¹

If incurred by a beneficed clergyman, the forfeiture is recoverable² in the consistory court of the diocese by a person authorised by the bishop, and its payment may be enforced by monition and sequestration³. If it is incurred by an unbeneficed clergyman, it may be recovered by any person by action in the High Court⁴.

1 Pluralities Act 1838, s 28. For the bishop's power to relax this restriction, see PARA 684 post. An incumbent is under certain restrictions in charging land belonging to the benefice: see the Agricultural Holdings Act 1948, s 88 (2), (3) PARA 1151 post.

2 It can only be recovered in the same year in which it has been incurred, or in the following year: see the Pluralities Act 1838, s 118.

3 Ibid s 114. The proceedings are in the nature of a civil suit in the consistory court: see the Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d), and PARA 1343 post; *Bluck v Rackham* (1846) 5 Moo PCC 305; *Rackham v Bluck* (1846) 9 QB 691. The bishop is empowered to direct that, so far as not remitted, the penalties shall be applied towards augmenting or improving the benefice or the house of residence or any of its other buildings or property: Pluralities Act 1938, s 114. In other cases the penalties recovered are to be paid over to the Church Commissioners to be applied for the purposes of their general fund: s 119; Church Commissioners Measure 1947, ss 1, 2. As to this fund, see PARA 1234 post.

4 Pluralities Act 1838, s 117.

UPDATE

682 Restriction on farming

TEXT AND NOTE 1--1838 Act s 28 repealed: Statute Law (Repeals) Act 2004. 1948 Act s 88(2), (3) repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 3--1963 Measure s 6(1)(d) amended: 2004 Act.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/683. Restrictions on trading.

683. Restrictions on trading.

A clergyman who holds any cathedral preferment, benefice, curacy or lectureship, or who is licensed or otherwise allowed to perform the duties of any ecclesiastical office, must not, either by himself or by any other person for him, or to his use, engage in or carry on any trade or dealing for gain or profit, or deal in any goods or merchandise, unless such trading or dealing has been or is carried on by or on behalf of more than six partners¹, or such trade or dealing, or a share in it, has devolved upon him or upon some other person for him or for his use under a will, or by inheritance, intestacy, settlement, marriage or bankruptcy; but in no such case may he act as a director or managing partner, or carry on the trade or dealing in person². There are, however, exceptions to this prohibition, and a clergyman may:

- (1) Keep a school or seminary, and act as schoolmaster or tutor or instructor and be concerned or engaged in giving instruction or education for profit or reward; and may buy and sell and do any other thing in relation to the management of any such school, seminary or employment;
- (2) buy any goods or articles to be used for his family or in his household and after so buying them may, even at an advanced price, sell them or any parts of them which he does not want or choose to keep;
- (3) dispose of books or other works to or by means of a bookseller or publisher;
- (4) be a manager, director, partner or shareholder in any benefit society or fire or life assurance society;
- (5) buy and sell again, for gain or profit, cattle, corn and other articles necessary or convenient to be bought, sold or kept by or for him, or to his use for the occupation, manuring, improving, pasturage or profit of any glebe, demesne or other land which may be lawfully held, occupied, possessed or enjoyed by or for him or to his use; but he must not buy or sell any such cattle, corn or other articles in person in any market, fair or place of public sale; and
- (6) sell minerals which are the produce of mines situated on his own land³.

Unlawful trading or dealing, in contravention of the foregoing provisions, is an ecclesiastical offence for which proceedings may be taken in the consistory court⁴.

1 No association or co-partnership consisting of more than six members or shareholders formed for the purpose of being engaged in and carrying on the business of banking or any other trade or dealing for profit, by means of boards of directors or managers, committees or other officers, acting on behalf of all the members or shareholders of it or persons otherwise interested in it, is illegal or void or occasions any forfeiture by reason only of its having, as a member, partner or shareholder of it, or as a person otherwise interested in it, a clergyman who holds such preferment or post or is licensed or otherwise allowed to perform such duties as mentioned in this paragraph; but no such clergyman may act as a director or managing partner or carry on the trade or dealing in person: Trading Partnerships Act 1841, s 1.

2 Pluralities Act 1838, s 29. For the bishop's power to relax this restriction, see PARA 684 post.

3 Ibid s 30.

4 See ibid s 31 (which includes provisions as to penalties); Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d); and PARA 1360 post.

UPDATE

683 Restrictions on trading

TEXT AND NOTES--1838 Act ss 29-31 repealed: Statute Law (Repeals) Act 2004.

NOTE 1--1841 Act s 1 repealed: 2004 Act.

NOTE 4--1963 Measure s 6(1)(d) amended: 2004 Act.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/684. Dispensation from restrictions on occupations.

684. Dispensation from restrictions on occupations.

Notwithstanding the foregoing restrictions on farming and trading, a clergyman holding any preferment or benefice or any curacy or lectureship or who is licensed or otherwise allowed to perform the duties of any ecclesiastical office whatever may be allowed to engage in trades or occupations other than those authorised by the relevant provisions of the Pluralities Act 1838 and the Trading Partnerships Act 1841¹, and without the aforesaid restrictions, provided he holds a licence to do so from the bishop of the diocese².

The bishop may grant³ such a licence only after consultation with the parochial church council of the parish, if any, in which the clergyman holds or is about to hold office, or may refuse such a licence only after consultation with that council, if any, and with the ministerial committee of the diocese⁴. If the bishop refuses such a licence the clergyman may, within one month after the refusal, appeal to the archbishop of the province, who may confirm or overrule the refusal as appears to him good and proper; his decision is final⁵.

1 Pluralities Act 1838, ss 28-31; Trading Partnerships Act 1841, s 1. See PARAS 682, 683 ante.

2 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 11 (1); Revised Canons Ecclesiastical, Canon C28 para 1.

3 It seems that the decision is based, at least in part, on how far, if at all, the engagement in the trade or occupation will affect the clergyman's performance of the duties of his office: *ibid* Canon C28 para 1.

4 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 11 (2); Revised Canons Ecclesiastical, Canon C28 para 2. As to the ministerial committee, see the Incumbents (Disability) Measure 1945, s 2, Sch. 1, and PARA 734 post.

5 Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 11 (2) proviso; Revised Canons Ecclesiastical, Canon C28 para 3. During a vacancy of the see the bishop's powers are exercisable by the archbishop of the relevant province, against whose refusal there is no appeal: Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 12; Revised Canons Ecclesiastical, Canon C28 para 4.

UPDATE

684 Dispensation from restrictions on occupations

TEXT AND NOTES--1964 Measure ss 11, 12 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 4--The last under which the ministerial committee was constituted, repealed: Incumbents (Vacation of Benefices) Measure 1977 s 20(2). Hence words 'if any ... diocese' repealed: Canon C28 para 2; Amending Canon No 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/C. DISABILITIES/685. Contracts not invalidated by illegal trading or dealing.

685. Contracts not invalidated by illegal trading or dealing.

A contract is not invalidated by reason only of its having been entered into by a clergyman illegally trading or dealing and it may be enforced by or against him in the same way as if no clergyman had been party to it¹.

¹ Pluralities Act 1838, s 31; *Ex parte Meymot* (1747) 1 Atk 196; *Lewis v Bright* (1855) 4 E & B 917.

UPDATE

685 Contracts not invalidated by illegal trading or dealing

TEXT AND NOTE 1--Repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/D. RELINQUISHMENT OF ORDERS/686. Deed of relinquishment.

D. RELINQUISHMENT OF ORDERS

686. Deed of relinquishment.

After he has resigned every or any ecclesiastical preferment held by him, a priest or deacon may execute a deed¹ relinquishing all rights, privileges, advantages and exemptions by law belonging to his office, and may cause it to be enrolled in the Central Office of the Supreme Court of Judicature, and deliver an office copy of the enrolment, with a statement of his place of residence, to the bishop of the diocese in which he last held a preferment, or, if he has not held any preferment, to the bishop of the diocese in which he is resident; and he is to give notice of his having done so to the archbishop of the province in which the bishop's diocese is situated². At the expiration of six months after the office copy of the enrolment has been delivered to the bishop, he or his successor in office, on the application of the relinquishing clergyman, must cause the deed to be recorded in the diocesan registry³. If, however, within the six months the bishop or his successor has notice of proceedings against the relinquishing clergyman as a person who has been admitted to the office of minister in the Church of England, the deed, on the clergyman's application, must be so recorded upon the termination of the proceedings by a definitive sentence or an interlocutory decree having the effect of definitive sentence and execution of it, but no sooner⁴.

1 For the form, see the Clerical Disabilities Act 1870, Sch. 2.

2 Ibid s 3; Supreme Court of Judicature (Consolidation) Act 1925, s 18 (2) (a); RSC Ord. 63, r 10; Revised Canons Ecclesiastical, Canon C1 para 2. For the meaning of 'preferment', see the Church Discipline Act 1840, s 2 (repealed), applied by the Clerical Disabilities Act 1870, s 2, and the Ecclesiastical Jurisdiction Measure 1963, s 66 (1), and PARA 1290 note 1 post. Before delivering the copy to the bishop the clergyman is at liberty to abandon the relinquishment and to have the enrolment of the deed vacated: *Ex parte A Clergyman* (1873) LR 15 Eq 154.

3 Clerical Disabilities Act 1870, s 4. A copy of the record must be given to the clergyman on payment of a fee not exceeding 50p for the recording and a copy; and a copy of the record, certified by the registrar, is evidence of the due execution, enrolment and recording of the deed, and of the fulfilment of the requirements of the Act in relation to it: s 7. Where the deed has been executed and enrolled but not recorded, the enrolment may be vacated notwithstanding the lapse of six months: *Re Clerical Disabilities Act 1870, ex parte Cowan* (1927) 137 LT 515.

4 Clerical Disabilities Act 1870, s 5. For the purpose of any such proceedings the service of a citation, notice or other document at the place stated by the clergyman to the bishop as his place of residence is a good service: s 6.

UPDATE

686 Deed of relinquishment

NOTE 2--1925 Act s 18(2)(a) repealed: Senior Courts Act 1981 Sch 7. Jurisdiction preserved in *ibid* s 19(2). RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/D. RELINQUISHMENT OF ORDERS/687. Effect of relinquishment.

687. Effect of relinquishment.

Upon the recording of a deed of relinquishment¹ the clergyman who executed it becomes incapable of officiating or acting as a minister of the Church of England and of holding any preferment in it, and ceases to enjoy the rights, privileges and exemptions attached to the office of such a minister², and every licence, office and place held by him, which must by law be held by a minister of the Church of England, becomes ipso facto void³. The clergyman also becomes discharged and free from all disabilities, disqualifications and restraints to which he would otherwise⁴ have been subject as a person admitted to the office of minister in the Church of England, and from all jurisdiction, penalties, censures and proceedings to which he would or might otherwise⁴ have been amenable or liable in consequence of his having been so admitted, or of anything done or omitted by him after such admission⁵. However, neither he nor his estate are relieved from any liability in respect of dilapidations or from any debt or other pecuniary liability incurred or accrued before or after his execution of the deed of relinquishment⁶.

1 See PARA 686 ante.

2 Clerical Disabilities Act 1870, s 4 (1). As to pensions, see PARA 746 post.

3 Ibid s 4 (2).

4 I.e. by force of the House of Commons (Clergy Disqualification) Act 1801 (see PARA 680 ante), or of any other law: Clerical Disabilities Act 1870, s 4 (3), Sch. 1; Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 4.

5 Clerical Disabilities Act 1870, s 4 (3).

6 Ibid s 8.

UPDATE

687 Effect of relinquishment

NOTE 4--House of Commons (Clergy Disqualification) Act 1801 repealed and Clerical Disabilities Act 1870 Sch 1 amended accordingly: House of Commons (Removal of Clergy Disqualification) Act 2001 Sch 2. As to the removal of the clergy disqualification, see further s 1, PARA 680.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(ii) Status/D. RELINQUISHMENT OF ORDERS/688. Resumption after relinquishment.

688. Resumption after relinquishment.

A person who has relinquished his legal status as priest or deacon¹ still, in the eyes of the church, has the indelible character of his order² and, if he wishes to resume that status may, at any time after the deed executed by him has been recorded in the diocesan registry, present a petition to the archbishop of the province in which the diocese is situate that the enrolment of the deed may be vacated³. On receipt of the petition the archbishop, after such consultation as he deems necessary⁴, may forthwith or after an interval, by writing under his hand and archiepiscopal seal, request the vacation of the enrolment of the deed⁵. Upon production of this written request the enrolment is vacated as if ordered by the High Court and the vacation is recorded in the registry⁶.

No re-ordination is required or is possible, and the clergyman may resume clerical functions; but for two years after the recording of the vacation the petitioning clergyman is incapable of holding any benefice or other preferment, including the office of a curate licensed under seal⁷. Subject to that, he may officiate as a minister under such conditions and to such an extent as the bishop of the diocese in which he officiates determines⁸. After these two years such a clergyman is capable of holding any benefice or other preferment in any diocese with the bishop's prior consent, which may be general or given in respect of some particular benefice or preferment⁹. Apart from these limitations the clergyman is in the same position as if he had never relinquished his status¹⁰.

1 See PARA 686 ante.

2 See the Revised Canons Ecclesiastical, Canon C1 para 2.

3 Clerical Disabilities Act 1870 (Amendment) Measure 1934, s 1 (1). The petition must set out (1) the petitioner's reasons for executing the deed of relinquishment, (2) the nature of his work or employment and his places of residence since the execution of the deed, and (3) his reasons for wishing to resume the position of an officiating minister: s 1 (1). It must be supported by a statutory declaration: s 1 (2).

4 If the deed of relinquishment is not enrolled in the archbishop's own diocese he must consult the bishop in whose diocese it is enrolled: *ibid* s 1 (3).

5 *Ibid* s 1 (3).

6 *Ibid* ss 1 (4), (5). Annual fees payable to diocesan registrars include payment for work done by them in connection with vacation of enrolments: Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, App. 1 (ii), made under the Ecclesiastical Fees Measure 1962, s 1. A copy of the registry record, duly extracted and certified by the registrar, is evidence of the vacation and its recording: Clerical Disabilities Act 1870 (Amendment) Measure 1934, s 3 (1). The clerk may obtain a certified copy on payment of a fee not exceeding 50p: s 3 (2).

7 *Ibid* s 2 (1).

8 *Ibid* s 2 (1).

9 *Ibid* s 2 (2).

10 *Ibid* s 1 (5).

UPDATE

688 Resumption after relinquishment

NOTE 6--As to current fees orders, see PARA 1204.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/689. Nature of office.

(iii) Beneficed Clergy

689. Nature of office.

A benefice is a freehold office¹. The holder of a benefice is called the incumbent or minister²; according to the nature of his benefice, he is also styled rector (or 'parson'³) or vicar⁴. The incumbent is a corporation sole⁵ and has a freehold interest in the emoluments of the benefice until his death or until the benefice is otherwise legally vacated by him⁶.

¹ *Kirton v Dear* (1869) LR 5 CP 217 at 220. See note 6 infra. As to benefices generally, see PARA 768 et seq post.

² The term 'minister' was used of all incumbents in the Act of Uniformity 1558 (repealed) and the Act of Uniformity 1662 (repealed apart from s 10); see also PARA 654 note 1 ante. An incumbent is so called from his being incumbent or diligently resident on the benefice: Co Litt 119b. The term 'curate' is nowadays habitually misused (even in law books) to signify an assistant curate ie a clerk who serves in a parish under the incumbent who is the true curate. In the Book of Common Prayer it is correctly used to signify one who has a cure of souls, and in this sense was properly applied to a perpetual curate who, without the status of a rector or vicar, had an independent cure, although the terms 'benefice' and 'perpetual curacy' and 'incumbent' do not in themselves necessarily imply a distinct and separate cure of souls or the status of a complete incumbent: *Dowdall v Hewitt* (1864) 10 LT 823 at 825. See also 2 Burn's Ecclesiastical Law (4th Edn) 54. Generally as to the meaning of 'minister', see PARA 654 note 1 ante. For statutory definitions, see PARA 544 note 6 ante para 574 note 1 ante, 1171 note 1 post. Generally as to the meaning of 'incumbent', see PARA 541 note 2 ante, 574 note 1 ante. For statutory definitions, see PARA 733 note 3 para 936 note 4 para 1012 note 5 para 1035 note 1 para 1061 note 7, and PARA 1230 note 6 post. As to perpetual curates, see PARA 771 post.

³ A rector is called 'parson' or persona ecclesiae because he is the local personification of the church. When in complete possession of the benefice, he is also called persona impersonata, parson impersonnee: Co Litt 300a, b. A rectory may be referred to as a 'church', and so also may a vicarage, where the rectory is inappropriate: *Reynoldson v Bishop of London* (1696) 3 Lev 435 at 436.

⁴ A vicar in a team ministry is not, however, the holder of a benefice, although he has equivalent status: see the Pastoral Measure 1968, s 19 (1) (b), (3), (7) PARA 691 note 1 post, and PARA 870 post.

⁵ Co Litt 250a. A rector or vicar of a new benefice created by a pastoral scheme is a corporation sole (Pastoral Measure 1968, s 22 (4)), as is the rector of a team ministry (s. 19 (2)).

⁶ *A-G v Brereton* (1752) 2 Ves Sen 425 at 429; *A-G v Pearson* (1817) 3 Mer 353 at 403; *Mason v Lambert* (1848) 12 QB 795 at 807; *Wallis v Birks* (1870) LR 5 CP 222. In the case of a team ministry the rector's tenure may be limited to a term of years: see the Pastoral Measure 1968, s 19 (2), and PARA 870 post.

UPDATE

689 Nature of office

NOTE 4--See now Pastoral Measure 1983 s 20(1)(a), (3), (7).

NOTE 5--Now *ibid* ss 23(5), 20(2).

NOTE 6--Now *ibid* s 20(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/690. Cure of souls.

690. Cure of souls.

The bishop has the general cure of souls throughout the whole of his diocese¹, and accordingly has the right personally to officiate at pleasure in any church within it. He cannot exercise this right by deputy, however², and, subject to it, an incumbent has the exclusive³ cure of souls within his parish, and no other clergyman has any right publicly to officiate or perform clerical ministrations within the parish without his consent⁴, except where the necessity for his consent has been abrogated by statutes or by arrangement, or has been forfeited by some default on his part⁵. All parochial duties are committed to and imposed upon the incumbent, and all fees and emoluments arising from the performance of these duties belong to him⁶. His consent is necessary to the erection of any chapel of ease or other public chapel or church within his parish⁷. He has the nomination of the minister to serve in any chapel of ease of in his parish⁸; and all money collected in any such chapel is at the disposal of himself and the churchwardens or the parochial church council as the case may be⁹ of the parish¹⁰. The rector or vicar of a new benefice created by a pastoral scheme has the exclusive¹¹ cure of souls in the area of the benefice, subject to the rights of the bishop and, if there is a team or group ministry established for the benefice, to the rights and duties of the other members of the team or group¹².

1 Watson, Clergyman's Law (4th Edn) 38; *Duke of Portland v Bingham* (1792) 1 Hag Con 157 at 161; see PARA 535 note 1 ante. As to cathedrals, see PARA 617 ante.

2 It is not clear whether a suffragan bishop is an exception to this rule: see the Suffragan Bishops Act 1534, ss 2, 4.

3 This is subject, however, to the right of the minister of a parish to perform offices and services at the home of any person whose name is on the electoral roll of that parish, as long as those present only include members of the family and household of that person: Extra-Parochial Ministry Measure 1967, s 1. It is also subject to the performance of offices and services at any university, college, school, hospital or public or charitable institution within his parish by a clergyman licensed by the bishop to perform them: s 2 (1), (2) (see PARA 731 post); Revised Canons Ecclesiastical, Canon C8 para 4. See also PARA 666 ante paras 730, 731 post, and PARA 732 note 5 post.

4 *Clerke d Prin v Heath* (1669) 1 Mod Rep 11; *Duke of Portland v Bingham* (1792) 1 Hag Con 157 at 161; *Carr v Marsh* (1814) 2 Phillim 198 at 206; *Farnworth v Bishop of Chester* (1825) 4 B & C 555 at 568; *Nesbitt v Wallace* [1901] P 354. See also eg Revised Canons Ecclesiastical, Canon B29 para 4.

5 *MacAllister v Bishop of Rochester* (1880) 5 CPD 194 at 203. As to cases of default, see PARAS 680, 682 ante, 697, 713, 717, 918 et seq post

6 *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 48.

7 *Duke of Portland v Bingham* (1792) 1 Hag Con 157; *Bliss v Woods* (1831) 3 Hag Ecc 486 at 509; *MacAllister v Bishop of Rochester* (1880) 5 CPD 194 at 204. As to chapels of ease, see PARA 1226 post.

8 *Dixon v Kershaw* (1766) Amb 528; *Duke of Portland v Bingham* (1792) 1 Hag Con 157; *Moysey v Hillcoat* (1828) 2 Hag Ecc 30; *Bliss v Woods* (1831) 3 Hag Ecc 486.

9 See PARA 576 ante, 981 post.

10 *Dowdall v Hewitt* (1864) 10 LT 823; *Magee v Bishop of Cashel* (1846) 9 I Eq R 319. The anomalous position of an unconsecrated chapel situated in a district chapelry annexed to a chapel of ease was discussed in *Liddell v Rainsford* (1868) 38 LJ Eccl 15, but such a situation is now unlikely to arise.

11 See note 3 supra.

12 Pastoral Measure 1968, ss 19 (6), 20 (1), 22 (4): see PARAS 769, 872 post. The scheme or, subject to the scheme, the bishop's licence may assign to a member or members of a team ministry special cures of souls or the responsibility for particular pastoral functions of a general responsibility shared with the rector for the cure of souls in the whole area: s 19 (7); see PARA 870 post.

UPDATE

690 Cure of souls

NOTE 3--1967 Measure s 2(1) amended: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 5 (see PARA 731).

NOTE 12--Consolidated in Pastoral Measure 1983; see ss 20(7), (8), 21(1), 23(5). A woman who is a vicar in a team ministry does not by virtue of s 20(8) have authority to preside at or celebrate the Holy Communion or pronounce the Absolution in a parish to which a resolution in the form prescribed in the Priests (Ordination of Women) Measure 1993 Sch 1 (see PARA 657B.2) applies: 1983 Measure s 20(8); 1993 Measure Sch 3 para 6. A member of a team ministry who is not a member of the team chapter may be assigned special responsibility for pastoral care in respect of a part of the area of the benefice: 1983 Measure s 20(8A), as added by the Team and Group Ministries Measure 1995 s 1(7) (see PARA 870).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/691. Right to officiate.

691. Right to officiate.

Without any licence from the bishop an incumbent has the right to perform divine service in any consecrated building within his benefice¹ save one which comes within the category of recognised exceptions, such as a public school chapel² or the chapel of any other college, school, hospital, asylum or public or charitable institution in which a clergyman is licensed by the bishop³. The rights of an incumbent with regard to a private or proprietary chapel are not so clear, but, having regard to the difficulty which an incumbent might often experience in gaining access to such a chapel without permission to enter upon private property, it may be that he has no absolute right to perform divine service there. The chapels of the colleges at the two ancient universities are by long custom extra-parochial, as also by statute⁴ are those on army and air force camps and the incumbent of the benefice where they are situated has no jurisdiction over them.

Strictly speaking, it would appear that an incumbent requires the bishop's licence to perform divine service in an unconsecrated building⁵, although it would seem that this requirement does not extend to services in the open air. No licence is required where the service is one directed by the Book of Common Prayer as, for instance, in the Order for the Visitation of the Sick⁶ although other celebrations of the Holy Communion in private houses, and preaching in them, are with certain exceptions forbidden⁷. Apart from these qualifications the incumbent's rights are unimpaired and presumably he may delegate them to anyone holding the bishop's licence to officiate⁸.

1 *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 46. In a team ministry, however, a vicar in the team may be given a special cure of souls independent of the rector in respect of part of the area of the team ministry: Pastoral Measure 1968, ss 19 (6), (7), 20 (1), 22 (4). See PARA 690 ante, 870 post. 'Divine service' now includes any authorised form of religious service: see Revised Canons Ecclesiastical, Section B (Canons B1-B42). Formerly it seems to have properly included only the choir offices, and hence matins and evensong: Oxford Dictionary of the Christian Church, 'divine service'.

2 Public Schools Act 1868, s 31. For the schools to which this Act is applied, see EDUCATION vol 15(1) (2006 Reissue) PARA 509.

3 See PARA 731 post. See also PARA 666 ante.

4 Army Chaplains Act 1868; see PARAS 729, 730 post.

5 *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 46; *Finch v Harris* (1702) 12 Mod Rep 640; *Bishop of Down v Miller* (1861) 11 I Ch R App 1; *Kitson v Drury* (1865) 29 JP 643; *Richards v Fincher* (1874) LR 4 A & E 255 at 262; Liberty of Religious Worship Act 1855, s 1. See also the Revised Canons Ecclesiastical, Canon C8 para 2, and PARA 666 ante.

6 See also the Book of Common Prayer. See PARA 1046 post.

7 See Revised Canons Ecclesiastical, Canon B40. It is unlikely that this is in any way affected by the Liberty of Religious Worship Act 1855, which seems to have been intended to modify the Toleration Act 1688 (repealed), and the Places of Religious Worship Act 1812.

8 See eg Revised Canons Ecclesiastical, Canon C24 para 2.

UPDATE

691 Right to officiate

NOTE 1--1968 Measure consolidated in Pastoral Measure 1983; see ss 20(7), (8), 21(1), 23(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/692. Residential requirements.

692. Residential requirements.

It is the duty of an incumbent to reside on his benefice or, if he holds two benefices, on one of them and in the house of residence¹, if any, belonging to it². If, without a licence for non-residence or legal exemption from residence³, he absents himself for upwards of three months at one time or different times in any one year, he is liable to forfeit one-third of the annual value of the benefice, if the absence does not exceed six months; one-half, if it exceeds six months; two-thirds, if it exceeds eight months; and three-quarters if it lasts for the whole year⁴. The forfeiture is recoverable in the consistory court by a person authorised by the bishop and its payment may be enforced by monition and sequestration⁵.

1 A house of residence belonging to an ecclesiastical benefice is not a dwelling house to which the Rent Acts apply (*Bishop of Gloucester v Cunningham* [1943] 1 KB 101, [1943] 1 All ER 61, CA; *Brandon v Grundy* [1943] 2 All ER 208, CA); nor do the Acts apply to a cottage belonging to the benefice if that cottage is a building necessary for the convenient occupation of the parsonage house within the meaning of the Pluralities Act 1838, s 59 (see *Neale v Jennings* [1946] KB 238, [1946] 1 All ER 224, CA; *Culverwell v Larcombe* (1945) 61 TLR 385, CA; and see PARA 1157 post). As to the Rent Acts, see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 808 et seq.

2 *Butler and Goodale's Case* (1598) 6 Co Rep 21 b; *Wilkinson v Allot* (1776) 2 Cowp 429; *Wright v Legge* (1815) 6 Taunt 48; *Wright v Flamank* (1815) 6 Taunt 52. Where an incumbent holds two benefices, one of which has, while the other has not, a house of residence, he may reside within the latter: *Wynn v Smithies* (1815) 6 Taunt 198. A house provided by the Church Commissioners outside the benefice is deemed the house of residence belonging to the benefice, if approved by the bishop by writing under seal and registered in the diocesan registry: Pluralities Act 1838, s 34. In rectories appropriate or inappropriate the residence of the vicar in the rectory house is a legal residence, provided the house belonging to the vicarage is kept in repair to the bishop's satisfaction: s 35. As to repairs, see PARA 1164 et seq post. As to letting the parsonage house, see PARA 1157 post.

3 Exemptions exist in favour of persons holding various university, collegiate and cathedral appointments: see *ibid* ss 37-39.

4 *Ibid* s 32; Revised Canons Ecclesiastical, Canon C25 paras 1, 2. A suit can only be brought in respect of penalties or forfeitures for non-residence incurred subsequently to 1st January in the year immediately preceding the year in which the suit is commenced: Pluralities Act 1838, s 118. Where an archbishop or bishop, after proceeding by monition for a penalty for non-residence over six months, remits the whole or part (see s 54), the Queen in Council in case of such remission by an archbishop, and the archbishop in case of such remission by a bishop, is to be informed of the remission and may allow or disallow it in whole or in part: s 57. The widow of a deceased incumbent may occupy the house of residence belonging to the benefice for two months after his decease: s 36. An incumbent is not liable to a penalty for not residing in the house of residence while it is occupied by a tenant to whom it has been let in good faith: s 60.

5 *Ibid* s 114. See PARA 682, 3 ante, 697, 1343 post.

UPDATE

692 Residential requirements

NOTE 2--1838 Act s 35 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 4--1838 Act s 36 also applies to the widower of a woman priest: Priests (Ordination of Women) Measure 1993 Sch 3 para 1.

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693. Licence to reside in some other house.

Where a benefice has no house, or no fit house, of residence, the bishop, on the written application of the incumbent, may, by licence, permit him to reside in some specified fit house, even if it does not belong to the benefice, for a specified time not exceeding the end of the calendar year next after that in which the licence is granted, and may from time to time renew the licence; but the house must be within three miles of the church, or within two miles, if the church is in a city, or market or borough town¹.

¹ Pluralities Act 1838, ss 33, 45, 46, 48-51; Ecclesiastical Fees Measure 1962, s 8 (1), Schedule, Part 1; Revised Canons Ecclesiastical, Canon C25 para 4. Where a benefice has no house of residence, the bishop's licence is not required to enable the incumbent to reside in a particular house within the benefice: *Wynn v Smithies* (1815) 6 Taunt 198 at 199.

UPDATE

693 Licence to reside in some other house

NOTE 1--1962 Measure replaced: Ecclesiastical Fees Measure 1986, see PARAS 1198, 1204. 1838 Act ss 45, 46, 50 (in part) repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/694. Licence for non-residence.

694. Licence for non-residence.

Upon a petition by an incumbent stating certain prescribed particulars, the bishop may grant to him a licence to reside out of the house of residence, or out of the limits of his benefice, or out of the three or two miles limit already mentioned¹, (1) if he is prevented from so residing by any incapacity of mind or body²; (2) if there is no house of residence, or the house is unfit for his residence from some cause other than his own negligence, default or other misconduct, and he keeps the house of residence, if any, in good repair, and two neighbouring incumbents with the rural dean certify that no house, convenient for his residence, can be obtained within the parish or within the three or two miles limit; (3) for a period not exceeding six months, renewable only with the archbishop's permission, on account of the dangerous illness of his wife or child residing with him; and (4) for his residence in a mansion or messuage of his own within the parish, provided he keeps the house of residence of the benefice in good repair. If a licence is refused an appeal lies within one month to the archbishop³.

The bishop may grant a licence to an incumbent to reside out of the limits of his benefice in other suitable cases, but such a licence will only be valid if and so far as it is allowed by the archbishop⁴.

1 See PARA 693 ante.

2 *Scammell v Willett* (1799) 3 Esp 29.

3 Pluralities Act 1838, ss 43, 45, 46, 48-51; Ecclesiastical Fees Measure 1962, s 8 (1), Schedule, Part I; Revised Canons Ecclesiastical, Canon C25 para 3.

4 Pluralities Act 1838, ss 44-51.

UPDATE

694 Licence for non-residence

NOTE 3--1962 Measure replaced: Ecclesiastical Fees Measure 1986, see PARAS 1198, 1204. 1838 Act ss 45, 46, 50 (in part) repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I. 1838 Act s 43 amended: Priests (Ordination of Women) Measure 1993 Sch 3 para 2; SI 2005/3129.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/695. Duration of licences.

695. Duration of licences.

No licence for non-residence continues in force after 31st December of the year next after the year in which it was granted¹.

A licence for non-residence may be revoked by the bishop after the incumbent has had an opportunity of showing cause to the contrary, or by the Queen in Council, but an appeal from any revocation by the bishop lies within one month to the archbishop².

1 Pluralities Act 1838, s 46.

2 Ibid ss 49-51; Ecclesiastical Fees Measure 1962, s 8 (1), Schedule, Part I.

UPDATE

695 Duration of licences

NOTES 1, 2--1838 Act ss 46, 50 (in part) repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 2--1962 Measure repealed: Ecclesiastical Fees Measure 1986, see PARAS 1198, 1204.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/696. Enforcement of non-residence under licence.

696. Enforcement of non-residence under licence.

An incumbent who is non-resident with the bishop's licence may not, without the bishop's permission, resume the duties of his benefice before the expiration of the period mentioned in the licence; and, if non-resident for more than twelve months during that period, may not interfere with the discharge of the duties of the benefice entrusted by the bishop to a curate or curates¹.

1 Pluralities Acts Amendment Act 1885, s 12: see PARA 717 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/697. Enforcement of residence.

697. Enforcement of residence.

Where an incumbent is non-resident without a licence or legal cause of exemption from residence¹, the bishop, either instead of or after proceeding for the penalties for non-residence, may issue a monition to him to proceed to and reside on his benefice and perform his duties there, and to make a return to the monition after a period of not less than thirty days, and, in case of no return or an unsatisfactory return being made, may issue an order requiring him to proceed and reside within thirty days². If the order is not complied with the bishop may, subject to an appeal to the archbishop, sequester the profits of the benefice until compliance or proof of sufficient reasons for non-compliance³. If an incumbent after a monition or order to reside on his benefice begins to reside and within twelve months thereafter wilfully absents himself from his benefice for one month together or at several times, the bishop, subject to an appeal to the archbishop, may issue sequestration without any other monition or order, and may repeat the process as occasion may require⁴.

1 Imprisonment for a crime is not a legal cause of exemption: *Ex parte Bartlett* (1848) 12 QB 488; *Re Bartlett* (1848) 3 Exch 28 at 33.

2 Pluralities Act 1838, s 54. The order must be served on the incumbent: ss 112, 113. The monition need not be preceded by a citation or other warning: *Bartlett v Kirwood* (1853) 2 E & B 771.

3 Pluralities Act 1838, s 54. Subject to the right of appeal, the decision as to the reasons for non-residence rests with the bishop: *Re Bartlett* (1848) 3 Exch 28. Before sequestration is issued the incumbent must be allowed an opportunity of showing cause against it, and the instrument of sequestration should recite the delinquency in respect of which it issues: *Bonaker v Evans* (1850) 16 QB 162, Ex Ch. If, however, in response to the monition or order to return into residence, he sends an affidavit containing an insufficient excuse, the bishop may issue sequestration after the thirty days without further hearing him: *Bartlett v Kirwood* (1853) 2 E & B 771. As to the sequestration, see PARA 905 post. An incumbent is also liable to suspension for non-residence: *Pawlet v Head* (1728) 2 Lee 565. As to costs, see the Pluralities Act 1838, s 55.

4 *Ibid* s 56. The bishop may, if he thinks fit, issue another order: *Bonaker v Evans* (1850) 16 QB 162, Ex Ch.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/698. Incumbent's duties.

698. Incumbent's duties.

An incumbent is bound:

- (1) in the absence of reasonable hindrance, to provide that Morning and Evening Prayer be said daily and that the Litany be said on appointed days in the church, or one of the churches, of which he is the minister¹;
- (2) except for some reasonable cause approved by the bishop of the diocese, to celebrate or cause to be celebrated Holy Communion every Sunday and on other great feast days and on Ash Wednesday; and diligently to administer the sacraments and other rites of the Church as occasion may require²;
- (3) except for some reasonable cause approved by the bishop of the diocese, to preach or cause to be preached a sermon in his church at least once each Sunday³;
- (4) to instruct or cause the children to be instructed in the Christian faith and to use such opportunities of teaching or visiting in the schools within his cure as are open to him⁴;
- (5) carefully to prepare, or cause to be prepared, all such as desire to be confirmed and, if satisfied of their fitness, to present them to the bishop for confirmation⁵;
- (6) diligently to visit his parishoners, particularly those who are sick and infirm, and to provide opportunities whereby any of his parishoners may resort to him for spiritual counsel and advice⁶;
- (7) to consult with the parochial church council on matters of general concern and importance to the parish⁷; and
- (8) if at any time he is unable to discharge his duties, to provide for his cure to be supplied by a priest licensed or otherwise approved by the bishop of the diocese⁸.

1 Revised Canons Ecclesiastical, Canon C24 para 1; cf. Canon B11 (amended by Amending Canon No. 3). As to the incumbent's right and duty to conduct divine service within the benefice, see PARA 700 post. As to services, see generally para 933 et seq post.

2 Ibid Canon C24 para 2 (amended by Amending Canon No. 3). See further the Book of Common Prayer; Revised Canons Ecclesiastical, Canon B22 para 4, Canon B35 para 3, Canon B38 para 2 (amended by Amending Canon No. 3); and cf. Canon B14. See also *Argar v Holdsworth* (1758) 2 Lee 515; *Kemp v Wickes* (1809) 3 Phillim 264 at 274, per Sir John Nicholl, Dean of the Arches; *R v James* (1850) 3 Car & Kir 167, CCR; *Tuckniss v Alexander* (1863) 32 LJ Ch 794 at 806, per Kindersley VC.

3 Revised Canons Ecclesiastical, Canon C24 para 3: see PARA 946 post. See also Canon B18 para 1.

4 Ibid Canon C24 para 4; see also Canon C26 para 1.

5 Ibid Canon C24 para 5; see also Canon B27 (amended by Amending Canon No. 3), and PARA 999 post.

6 Ibid Canon C24 para 6; see also Canon B37 (amended by Amending Canon No. 3), and PARA 1046 post.

7 Ibid Canon C24 para 7 (substituted by Amending Canon No. 1); see also the Parochial Church Councils (Powers) Measure 1956, s 2 (1); Synodical Government Measure 1969, s 6; and *Re St Peter, Roydon* [1969] 2 All ER 1233 at 1235, 1236, [1969] 1 WLR 1849 at 1853, per Forbes J.

8 Revised Canons Ecclesiastical, Canon C24 para 8. As to the provisions affecting the ecclesiastical duties of vicars of guild churches, see the City of London (Guild Churches) Act 1952, s 12, and PARAS 602, 606 ante. As to disciplinary proceedings in case of breach of duty, see PARA 1357 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/699. Rights in performance of divine service.

699. Rights in performance of divine service.

The incumbent of a benefice is bound to observe the legal requirements and restrictions in reference to the performance of divine service¹. Subject to that, and to the rights of the bishop as paramount incumbent of all the parishes in his diocese² and to any other concurrent rights³, and subject also to any legal limitations imposed by the existence within the benefice of an ecclesiastical district⁴ or a chapel exempt by law from the incumbent's control⁵, or by his suspension or inhibition⁶, an incumbent has the control of the performance of divine service, including the singing, throughout his benefice⁷.

1 *Parnell v Roughton* (1874) LR 6 PC 46 at 53. As to the enforcement of duties, see PARA 1357 post. For the provisions affecting the ecclesiastical duties of vicars of guild churches, see the City of London (Guild Churches) Act 1952, s 12, and PARAS 602, 606 ante.

2 See PARA 535 note 1 ante, 700 post.

3 See PARA 690 ante, 701 post.

4 See PARA 537 ante.

5 See PARA 731 post.

6 See PARAS 720, 1377, 1378 post

7 *Hutchins v Denziloe and Loveland* (1792) 1 Hag Con 170; *Wood v Headingley-cum-Burley Burial Board* [1892] 1 QB 713 at 729, per Lord Coleridge CJ. As to music, see Revised Canons Ecclesiastical, Canon B20, and PARA 560 ante, and as to money collected in church, see Canon F10, and PARA 951 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/700. Duties where benefice has consecrated places of worship.

700. Duties where benefice has consecrated places of worship.

The incumbent has the right and duty to conduct divine service or provide for its being conducted in all consecrated places of worship within the benefice¹ except where the bishop has directed otherwise² or where such places are exempt by law from the incumbent's control³. If the benefice contains more than one consecrated place of worship, he commits an ecclesiastical offence if he neglects to perform or provide for the performance of divine service in each⁴, or if he closes one of them and disobeys the bishop's order directing him to perform a duty in it⁵.

1 *Williams' Case* (1592) 5 Co Rep 72 b; *Jones v Stone* (1700) 1 Ld Raym 578; *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 46, per Sir John Nicholl; *Rugg v Bishop of Winchester* (1868) LR 2 PC 223; see also PARAS 698, 699 ante. The bishop cannot interfere with an incumbent's right to preach in any church in his own benefice: *Colefatt v Newcomb* (1705) 2 Ld Raym 1205. As to vicars of guild churches, see PARA 602 ante.

2 See eg the Pluralities Act 1838, s 80; and see PARA 943 post.

3 See PARAS 536, 666, 691 ante, 731, 773 post.

4 *Bishop of Llandaff v Belcher* (1687) Rothery's Precedents, No. 91, p. 42; *Hancock v Bomer* (1692) Rothery's Precedents, No. 99, p. 47; *Jones v Curtis* (1715) Rothery's Precedents, No. 119, p. 58; *Rugg v Bishop of Winchester* (1868) LR 2 PC 223 at 234, 236, 237.

5 *Rugg v Bishop of Winchester* (1868) LR 2 PC 223 at 235-237. As to the offence of neglect of duty, see PARA 1357 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iii) Beneficed Clergy/701. Performance of divine service by clergyman.

701. Performance of divine service by clergyman.

Where there is a resident incumbent not under suspension or inhibition, no clergyman (other than a minister of a parish exercising his extra-parochial rights¹, or fellow incumbents in a group ministry² or, in certain cases, a vicar or vicars in a team ministry³) can perform divine service in whole or in part within the benefice without the consent of the incumbent⁴, except in a chapel exempt by law from the control of the incumbent⁵ or in a university, college, school, hospital or public or charitable institution to which a clergyman has been licensed⁶. Where an incumbent has consented to a clergyman being licensed by the bishop to minister in a proprietary chapel within his benefice he cannot afterwards withdraw his consent, but that consent will not bind succeeding incumbents⁷.

1 See the Extra-Parochial Ministry Measure 1967, s 1, and PARA 690 ante.

2 See PARA 872 post.

3 See the Pastoral Measure 1968, ss 19 (6), (7), 20 (1), 22 (4), and PARA 690 ante.

4 *Carr v Marsh* (1814) 2 Phillim 198; *Farnworth v Bishop of Chester* (1825) 4 B & C 555 at 568-570; *Hodgson v Dillon* (1840) 2 Curt 388 at 392, 393, per Dr. Lushington; *Jones v Jelf* (1863) 8 LT 399 at 401; *Richards v Fincher* (1873) LR 4 A & E 107.

5 See PARA 691 ante, 731 post.

6 See the Extra-Parochial Ministry Measure 1967, s 2, and PARA 690 ante.

7 *Richards v Fincher* (1873) LR 4 A & E 107.

UPDATE

701 Performance of divine service by clergyman

NOTE 3--Consolidated in Pastoral Measure 1983; see ss 20(7), (8), 21(1), 23(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/A. IN GENERAL/702. Classes of unbeneficed clergy.

(iv) Unbeneficed Clergy

A. IN GENERAL

702. Classes of unbeneficed clergy.

The unbeneficed clergy comprises those who are unattached and have no definite parochial or other ministerial charge; curates or ministers in charge of a parish; vicars in team ministries; assistant curates, lecturers and preachers; ministers of chapels of ease; ministers of proprietary chapels and chaplains. Whether they are unattached or have an appointed sphere of duty they require, as a rule, in order to enable them to officiate anywhere, the licence or permission of the bishop of the diocese¹ and the consent of the incumbent of the parish².

1 Revised Canons Ecclesiastical, Canon C8 para 3; Act of Uniformity 1662, s 15; Clerical Subscription Act 1865, s 15 (repealed); *Finch v Harris* (1702) 12 Mod Rep 640; *Trebec v Keith* (1743) 2 Atk 498; *Smith v Lovegrove* (1755) 2 Lee 162; *Barton v Wells* (1789) 1 Hag Con 21; *Carr v Marsh* (1814) 2 Phillim 198 at 206, per Sir John Nicholl; *Hodgson v Dillon* (1840) 2 Curt 388 at 392; *Barnes v Shore* (1846) 1 Rob Eccl 382; *Freeland v Neale* (1848) 1 Rob Eccl 643; *Kitson v Drury* (1865) 11 Jur NS 272. The bishop need not assign any cause for refusing his licence or permission, even though the clergyman is beneficed or licensed in another diocese: *Bishop of Down v Miller* (1861) 11 I Ch R App 1 at 9. The licence may be revoked summarily by the bishop (or, during a vacancy, by the archbishop) for any cause which appears to him to be good and reasonable, after having given the clergyman sufficient opportunity to show cause to the contrary (Clergy (Ordination and Miscellaneous Provisions) Measure 1964, ss 10 (1), 12); but an appeal lies to the archbishop within one month after service of the notice of revocation (s. 10 (2)). A clergyman authorised to officiate elsewhere and not actually inhibited from officiating in the diocese, however, may give assistance in ministrations on exceptional occasions without obtaining the bishop's permission: *Gates v Chambers* (1824) 2 Add 177 at 191; *Dakins v Seaman* (1842) 9 M & W 777 at 780, per Parke B. As to vicars in team ministries, see PARA 870 post.

2 Revised Canons Ecclesiastical, Canon C8 para 4; *Carr v Marsh* (1814) 2 Phillim 198; *Farnworth v Bishop of Chester* (1825) 4 B & C 555 at 568-570; *Hodgson v Dillon* (1840) 2 Curt 388 at 392, 393, per Dr Lushington; *Molyneux v Bagshaw* (1863) 9 Jur NS 553 at 554, per Dr. Lushington; *Jones v Jelf* (1863) 8 LT 399 at 401; *Richards v Fincher* (1874) LR 4 A & E 255. For the exceptions, see PARAS 696, 701 ante, 918 post.

UPDATE

702 Classes of unbeneficed clergy

NOTE 1--Clergy (Ordination and Miscellaneous Provisions) Measure 1964 s 10 repealed: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 3. The General Synod now has power to make provision by canon with respect to the revocation by the bishop of licences granted to ministers and with respect to appeals from any such revocation: s 7(1). However, in the case of a deacon to whom the Pastoral Measure 1983 s 20(3A) applies (see PARA 870) a licence may not be revoked by a bishop, unless the bishop is satisfied that there has been a serious breakdown of the pastoral relationship between that deacon and the parishioners concerned or he is unable by reason of age or infirmity to discharge his pastoral duties adequately: 1988 Measure s 7(1A)(a), added by Team and Group Ministries Measure 1995 s 15.

References to a serious breakdown of the pastoral relationship between a deacon and the parishioners are to be construed in accordance with the Incumbents (Vacation of Benefices) Measure 1977 s 19A (see PARA 733A.1): 1988 Measure s 7(1A)(b), as added.

1964 Measure s 12 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/A. IN GENERAL/703. Unbeneficed clergy holding office.

703. Unbeneficed clergy holding office.

The position of an unbeneficed clergyman (like an incumbent's) is that of a person holding an ecclesiastical office and not that of a person whose duties and rights are defined by contract¹; and an unbeneficed clergyman is consequently not insurable as an employed person under a contract of service², but is insurable as a self-employed person³. Further, he is not in insurable employment for the purposes of industrial injuries insurance⁴.

An unbeneficed clergyman who is licensed or otherwise allowed to perform the duties of any ecclesiastical office is subject to the same restrictions as to farming and trading as is the incumbent of a benefice⁵.

1 *Re National Insurance Act 1911, Re Employment of Church of England Curates* [1912] 2 Ch 563.

2 *Ie in class (a): see the National Insurance Act 1965, s 1 (2) (a) (repealed).*

3 *Ie in class (b): see ibid s 1 (2) (b) (repealed).*

4 See the National Insurance (Industrial Injuries) Act 1965, s 1, Sch. 1.

5 See PARA 682 et seq ante.

UPDATE

703 Unbeneficed clergy holding office

TEXT AND NOTE 1--As to the position of a Methodist minister, see *President of the Methodist Conference v Parfitt* [1984] QB 368, CA (the admission and functions of a Methodist minister indicate that no contract of service is intended between a minister and the Methodist church; since a minister is not an employee an industrial tribunal has no jurisdiction to consider a complaint of unfair dismissal by a minister).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/B. CURATES OR MINISTERS IN CHARGE/704. Meaning.

B. CURATES OR MINISTERS IN CHARGE

704. Meaning.

Curates or ministers in charge¹ include clergymen who are in charge of a parish either (1) during a vacancy in the benefice, including cases where the right of presentation is suspended²; or (2) where a sequestration under a judgment against the incumbent or under his bankruptcy has been in force for six months³; or (3) in certain cases where the incumbent is in breach of his duty of residence⁴; or (4) where the incumbent is under a disability upon which the ministerial committee has reported⁵; or (5) where a censure of suspension or inhibition has been pronounced against the incumbent⁶. In these cases the clergyman is appointed as a stipendiary assistant curate and acquires his position of curate in charge by the incumbent's permitted or enforced withdrawal. An assistant curate may be also temporarily in charge of a parish during a short absence of the incumbent, but in that case acts as the representative of the incumbent and under his directions⁷.

¹ See PARA 702 ante. As to the anomalous status of the vicar of a guild church in the City of London, see PARA 602 ante.

² See PARAS 713, 714 post.

³ See PARA 715 post.

⁴ See PARA 717 post.

⁵ See PARA 719 post.

⁶ See PARA 720 post; and see *Pinder v Barr* (1854) 4 E & B 105 at 115, 116.

⁷ *Martyn v Hind* (1785) Rothery's Precedents, No. 178, p. 89; *Parnell v Roughton* (1874) LR 6 PC 46 at 53.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/B. CURATES OR MINISTERS IN CHARGE/705. Ministers in charge of a parish.

705. Ministers in charge of a parish.

A curate who by reason of a vacancy in the benefice or for some different reason¹ is the minister in charge of a parish has, while so in charge, the incumbent's rights and duties with reference to the services in the church and the cure of souls of the parish². He occupies the same position as the incumbent in the choice of churchwardens and sidesmen³. If the benefice is vacant, he has the right which the incumbent possesses of joining in the appointment of the parish clerk⁴, but not if the benefice is under sequestration owing to the incumbent's bankruptcy⁵.

1 The mere fact of a benefice being under sequestration does not render the curate who is appointed to serve the cure (see PARA 715 post) the minister in charge (*Lawrence v Edwards* [1891] 1 Ch 144).

2 *Pinder v Barr* (1854) 4 E & B 105. If there is an incumbent, however, who is not suspended or inhibited or restrained by statute from interfering with the discharge of the duties of the benefice, the curate represents the incumbent and is subject to any lawful directions which the incumbent may give as to the discharge of those duties: *Pinder v Barr* supra at 115, 116.

3 *Hubbard v Penrice* (1746) 2 Stra 1246. As to the appointment of churchwardens, see PARA 544 et seq ante; and as to sidesmen, see PARA 557 ante.

4 *Pinder v Barr* (1854) 4 E & B 105; Parochial Church Councils (Powers) Measure 1956, s 7 (iii); see PARA 558 ante.

5 *Lawrence v Edwards* [1891] 1 Ch 144. The incumbent may appoint in such a case: *Lawrence v Edwards* supra.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/706. Admission to office of assistant curate.

C. CURATES' CONDITIONS OF APPOINTMENT

(A) LICENCE, STIPEND AND STATUS GENERALLY

706. Admission to office of assistant curate.

A clergyman is admitted to the office of assistant curate in a benefice by the bishop's licence on the nomination, except where there is a clear custom or a statutory enactment to the contrary, of the incumbent¹. The selling of a curacy is simony². Before a clergyman is licensed, the bishop must be satisfied by examination as to his personal fitness for the cure to which he is nominated, and if he comes from another diocese the bishop must be shown the clergyman's letters of orders, or other sufficient evidence that he is ordained, as well as testimony from the bishop of the diocese from which he comes of his honesty, ability and conformity to the doctrine of the Church of England, together with letters testimonial of his good life and conversation from three priests beneficed in that diocese, countersigned by the bishop of that diocese³. Before obtaining a licence to a stipendiary curacy the clergyman must present to the bishop a declaration, signed by himself and by the incumbent of the benefice to which he is to be licensed⁴, to the effect that the incumbent bona fide undertakes to pay to him a specified annual sum as a stipend for his services as curate, and that he bona fide intends to receive the whole of it without any deduction or abatement in respect of rent or consideration for the use of the glebe house, or on any other account except pension contributions⁵.

On being licensed he must take the oath of canonical obedience to the bishop⁶, and, unless he has been ordained the same day and has made the declaration of assent⁷, must make and subscribe in the presence of the bishop by whom he is licensed, or that bishop's commissary, the declaration of assent⁸; and must, on the first Lord's Day on which he officiates in the church or in one of the churches in which he is licensed to serve, make the same declaration at the time of divine service in the presence of the presence of the congregation⁹.

No stipendiary curate may be licensed to serve in more than one church or chapel unless they are churches of one united benefice or held in plurality or the chapel is dependent on the parish church¹⁰.

1 Revised Canons Ecclesiastical, Canon C12 para 3; Act of Uniformity 1662, s 15; 1 Johnson's Clergyman's Vade Mecum 94 et seq; Watson, Clergyman's Law (4th Edn) 209; 2 Burn's Ecclesiastical Law (4th Edn) 61; *R v Bishop of Oxford* (1806) 7 East 345; *Arnold v Bishop of Bath and Wells* (1829) 5 Bing 316 at 325. An assistant curate is not infrequently engaged on trial in the first instance with the mere permission of the bishop without a licence: see PARA 721 note 1 post. As to appointment by the bishop alone in certain cases, see PARAS 710, 717 post. For the forms of nomination and licence, see Forms and Precedents.

2 See PARA 832 post.

3 Revised Canons Ecclesiastical, Canon C12 para 2; Gib Cod 896; *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 54. The bishop's refusal of the licence, after inquiry upon grounds which appear to him sufficient, cannot be questioned: 1 Johnson's Clergyman's Vade Mecum 95; *R v Bishop of London* (1811) 13 East 419; *R v Archbishop of Canterbury and Bishop of London* (1812) 15 East 117; *Bishop of Down v Miller* (1861) 11 I Ch R App 1 at 9; *R v Bishop of Liverpool* (1904) 20 TLR 485. As to letters of orders, see PARA 662 ante.

4 Clerical Subscription Act 1865, s 6; Revised Canons Ecclesiastical, Canon C12 para 3. Whether there is such an office as that of honorary assistant curate is doubtful (*R v Bishop of Liverpool* (1904) 20 TLR 485), although in practice a number have been appointed.

5 Clerical Subscription Act 1865, s 3; Clergy Pensions Measure 1948, s 56 (1) (repealed); Revised Canons Ecclesiastical, Canon C12 para 3.

6 Clerical Subscription Act 1865, s 12; Revised Canons Ecclesiastical, Canon C14 para 3.

7 le that contained in ibid Canon C15 para 1 (1) (substituted by Amending Canon No, 4): see PARA 660 ante.

8 Ibid Canon C15 para 1 (6) (substituted by Amending Canon No. 4).

9 Ibid Canon C15 para 4 (a) (substituted by Amending Canon No. 4). In the case of a minister licensed to a stipendiary curacy in a guild church, the declaration must be made in that church on such weekday as the bishop may approve: Canon C15 para 4 (b) (substituted by Amending Canon No.4).

10 Ibid Canon C12 para 4.

UPDATE

706 Admission to office of assistant curate

TEXT AND NOTES--The bishop of a diocese may by an instrument under his hand direct that any office of assistant curate in his diocese may be described in such terms as may be specified in the instrument and, where such an instrument is in force, any licence issued to a person to exercise the office must refer to the assistant curate by that description and any reference in any enactment, canon or other instrument to an assistant curate is to be construed accordingly: Dioceses, Pastoral and Mission Measure 2007 s 61(1). For supplementary provision see s 61(2)-(5).

TEXT AND NOTE 1--The General Synod may make provision by canon for empowering the bishop of a diocese to grant a licence to an assistant curate to minister in any parish or conventional district of his diocese for a specified term of years and to revoke such licence summarily before the expiration of the term specified for such cause and subject to such conditions as the canon may provide: Church of England (Miscellaneous Provisions) Measure 1976 s 2(1).

TEXT AND NOTE 3--Letters testimonial from three priests no longer required: Canon C12 para 2 as amended by Amending Canon No 5.

TEXT AND NOTES 4, 5--Repealed: Church of England (Miscellaneous Provisions) Measure 1976 s 1 Schedule; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/707. Stipulation for stipend.

707. Stipulation for stipend.

Every licence granted to a stipendiary curate, whether the incumbent is resident or non-resident, specifies the amount of the stipend to be paid to the curate¹. Any agreement made between him and the incumbent in fraud or derogation of the law as to curates' stipends, or by which a curate undertakes or binds himself to take a stipend less than that which is assigned to him by his licence, is void; and, notwithstanding his acceptance of a less sum and any discharge given by him for it, he and his personal representatives remain entitled to the full amount specified in the licence; and on application to the bishop within twelve months after the curate has quitted the curacy or died, payment of the unpaid portion, together with full costs of recovering it, is to be enforced by monition and sequestration of the profits of the benefice².

1 Pluralities Act 1838, s 83; Benefices (Ecclesiastical Duties) Measure 1926, s 14 (4). See, however para 706 text to note 5 ante, 712 post.

2 Pluralities Act 1838, s 90.

UPDATE

707 Stipulation for stipend

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/708. Record of licences.

708. Record of licences.

Copies of all licences and revocations of licences to stipendiary curates must be entered in the diocesan registry, and copies of them must be transmitted to the churchwardens of the parish to which they relate, to be deposited in the parish chest¹.

¹ Pluralities Act 1838, s 102; Ecclesiastical Fees Measure 1962, s 8 (1), Schedule, Part I. The fees previously payable in respect of a curate's licence are no longer payable: Legal Officers Fees Order 1964, S.I. 1964 No. 1033, Schedule, Table I, provision 3; Legal Officers Fees Order 1974, S.I. 1974, No. 1837, art. 2. If the revocation of a licence is annulled by the archbishop the copies of the revocation are to be withdrawn from the registry and the parish chest: Pluralities Act 1838, s 50 proviso, applied by s 102 proviso.

UPDATE

708 Record of licences

NOTE 1--1962 Measure replaced: Ecclesiastical Fees Measure 1986, see PARAS 1198, 1204. There is no longer a requirement to transmit copies of all licences and revocations of licences to the churchwardens of the parish to which they relate: 1838 Act s 102; Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/709. Differences as to stipend.

709. Differences as to stipend.

A difference between a curate and his incumbent as to his stipend, or the payment of it, must be summarily decided by the bishop without appeal; in case of wilful neglect to pay the stipend or any arrears the bishop may enforce payment by monition and by sequestration of the profits of the benefice¹.

¹ Pluralities Act 1838, ss 83, 109. A curate of a non-resident incumbent may be appointed sequestrator to recover payment of his own stipend: *Daniel v Morton* (1850) 16 QB 198. A curate cannot bring an action against his incumbent for arrears of his salary (*West v Turner* (1837) 6 Ad & El 614), nor where the chancellor has ordered a writ of sequestration to issue, and has allowed the sequestrator's accounts, can the incumbent obtain an order from a civil court to reopen them (*Burrow v Tilson* (1898) 14 TLR 214, CA); but where an incumbent contracts to provide a curate with board and lodging in addition to his salary, an action will lie for damages for breach of the contract (*Fraser v Denison* (1888) 57 LJQB 550).

UPDATE

709 Differences as to stipend

TEXT AND NOTE--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/710. Appointment of curate where incumbent is resident.

710. Appointment of curate where incumbent is resident.

Where the incumbent of a benefice is resident and duly performs the duties of the cure the bishop cannot compel the appointment of a curate or assign to a curate a larger stipend than the incumbent is willing to pay¹, except where the benefice exceeds £500 in annual value, and either the population amounts to 3,000 or there is a second church or chapel with a hamlet or district containing 400 persons². In this case the bishop may require the incumbent to nominate a person to be licensed as curate to assist in performing the duties of the benefice and to be paid by the incumbent and may, if the nomination is not made within three months, appoint and license a curate with a stipend not exceeding £150². An appeal from the requisition or appointment lies within one month to the archbishop³.

However, in the case of a benefice united or enlarged under the Union of Benefices Measure 1923 where the scheme constituting the benefice was pending on 1st April 1969 and provides for the appointment of a curate, the incumbent may similarly be required to nominate a curate⁴. If the nomination is not made within three months the bishop may appoint and license a curate with a stipend of the amount specified in the scheme⁴. There is a similar right of appeal to the archbishop⁴.

1 *R v Bishop of Peterborough* (1824) 3 B & C 47 at 50.

2 Pluralities Acts Amendment Act 1885, s 13.

3 *Ibid* ss 13, 15.

4 Union of Benefices Measure 1923, s 18 (b) (repealed); Pastoral Measure 1968, s 94, Sch. 8.

UPDATE

710 Appointment of curate where incumbent is resident

TEXT AND NOTES 2, 3--References to payment and stipend in 1885 Act s 15 repealed: Endowments and Glebe Measure 1976 Sch 8. 1885 Act s 13 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/711. Incumbent's responsibility for curate.

711. Incumbent's responsibility for curate.

Unless the incumbent is suspended or inhibited, a curate must act in accordance with his directions¹, and the incumbent is responsible for what is done by a curate under his directions or with his consent².

1 *Martyn v Hind* (1785) Rothery's Precedents, No. 178, p. 89.

2 *Parnell v Roughton* (1874) LR 6 PC 46 at 53.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(A) Licence, Stipend and Status generally/712. Stipend assigned to curate in incumbent's absence.

712. Stipend assigned to curate in incumbent's absence.

Every curate of a nonresident incumbent, or one who is appointed under the provisions of any enactment empowering the bishop to appoint a curate during any period of sequestration under a judgment recovered against, or the bankruptcy of, an incumbent¹, or during the vacancy of a benefice, is to receive such stipend² as is assigned to him by the bishop of the diocese³ in which he serves⁴. The stipend must not exceed a sum equal to three-quarters of the net annual value of the benefice, except where the curate is appointed during the vacancy of a benefice when it may be a sum not exceeding the net annual value of the benefice⁵. In any case where more than one curate is appointed to perform the duties of a single benefice, the stipends of the curates so appointed must be treated as if the aggregate were the stipend of a single curate⁶. The stipend assigned to a curate on the occasion of his appointment must be specified in the licence granted to him by the bishop⁷. During a vacancy of a see the bishop's powers are exercisable by the guardian of the spiritualities⁸.

For the purposes of the foregoing provisions, the net annual value of a benefice is ascertained by deducting from the gross amount of the annual value all taxes (other than income or property tax), rates, dues and permanent charges and outgoings, and, subject as stated below, all assessments relating to repairs and dilapidations⁹; but not any curate's stipend or any such taxes or rates in respect of the parsonage house of the benefice or of the glebe land belonging to it as are usually paid by tenants or occupiers, or any money expended in the repair or improvement of or such parts of those assessments as are attributable to the parsonage house and buildings and premises belonging to it¹⁰. The bishop has power to take the necessary steps to determine the net annual value and, for this purpose, his determination is final and conclusive¹¹.

1 See PARA 715 post.

2 As to stipends payable out of a fund under a statute or scheme, see PARAS 1246, 1247 post.

3 For the provisions governing stipends paid to curates appointed by the bishop under the Incumbents (Disability) Measure 1954, see PARA 736 post.

4 Benefices (Ecclesiastical Duties) Measure 1926, s 14 (1). In addition to his power of determining the stipends of curates officiating in vacant benefices, the bishop may also determine the amount of the remuneration to be paid to clerks in holy orders who perform occasional duties in those benefices, and a determination so given is binding on and must be given effect to by sequestrators: Benefices (Sequestrations) Measure 1933, s 1 (1), (2). The bishop is authorised both to fix a general scale of remuneration to be applied in the absence of any special determination by him of the remuneration to be paid in a particular case, and also to make such a special determination if the circumstances so require: s 1 (3).

5 Benefices (Ecclesiastical Duties) Measure 1926, s 14 (1) proviso.

6 Ibid s 14 (2).

7 Ibid s 14 (4).

8 Vacancies in Sees Measure 1959, ss 4, 5 (1).

9 I.e. under the Repair of Benefice Buildings Measure 1972: see PARAS 1167, 1170 post.

10 Benefices (Ecclesiastical Duties) Measure 1926, s 15 (1). Provisions, not expressly repealed by that Measure, are contained in the Pluralities Act 1838, ss 91, 92, for certain deductions from stipends and for the retention by the incumbent of money for repairs.

11 Benefices (Ecclesiastical Duties) Measure 1926, s 15 (2).

UPDATE

712 Stipend assigned to curate in incumbent's absence

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(B) Appointment in Particular Circumstances/713. Appointment of curate during vacancy.

(B) APPOINTMENT IN PARTICULAR CIRCUMSTANCES

713. Appointment of curate during vacancy.

When a benefice becomes vacant a sequestration is issued¹, and the duties are performed by a curate or curates appointed by the bishop² or, in default of any appointment by him, employed for the purpose by the sequestrators³; but any stipendiary curate who is licensed to the parish continues in office and his stipend is paid out of the income of the benefice during the vacancy, and this may sometimes render the employment of any other clerk unnecessary. The bishop may assign to every curate appointed to perform the duties a stipend not exceeding the net annual value⁴ of the benefice⁵. The sequestrators pay the amount out of the profits of the benefice which come to their hands and, if these are not sufficient, the incoming incumbent is liable to pay the balance out of the profits received by him⁶. If, on the other hand, the sequestrators have a balance of profits after paying for the services and for the costs of the sequestration, the new incumbent is entitled to it⁷.

1 Gib Cod 749.

2 Gib Cod 750; Pluralities Act 1838, s 100; and see PARAS 715, 910 post.

3 *Dakins v Seaman* (1842) 9 M & W 777.

4 As to the method of computing the net annual value, see PARA 712 ante.

5 Benefices (Ecclesiastical Duties) Measure 1926, ss 14, 15. During a vacancy in a see, this power is exercisable by the guardian of the spiritualities: Vacancies in Sees Measure 1959, s 4.

6 Tithe Act 1536, ss 3, 8; Pluralities Act 1838, ss 100, 101. An unlicensed clerk not appointed by the bishop, but employed by the sequestrators, can recover a reasonable sum for his services from the new incumbent: *Dakins v Seaman* (1842) 9 M & W 777.

7 Tithe Act 1536, ss 1-3; *Halton v Cove* (1830) 1 B & Ad 538; *Betham v Gregg* (1834) 10 Bing 352; *Russell v Lay* (1897) 66 LJQB 582.

UPDATE

713 Appointment of curate during vacancy

TEXT AND NOTES--Where a benefice for which a team ministry is established becomes vacant, a person holding the office of vicar in a team ministry may be appointed to act as rector in the team ministry (see further PARA 871).

TEXT AND NOTE 2--1838 Act s 100 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTES 4-7--Repealed: Endowments and Glebe Measure 1976 Sch 8.

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714. Appointment of curate when presentation is suspended.

Where a benefice is vacant and the right of presentation to it has been suspended by the bishop¹, the bishop must sequester the profits of the benefice² and, subject to and in accordance with the bishop's directions, the sequestrators must make provision for the performance of the ecclesiastical duties of the benefice³. Before giving any such directions the bishop must consult the parochial church council concerned and, as far as reasonably practicable, the patron of the benefice⁴. The bishop may appoint a curate in charge of the benefice and may require the curate to reside in the parsonage house of the benefice⁵. Where a benefice is vacant and the right of presentation is restricted⁶, the bishop may nevertheless exercise the above powers⁷.

The right of presentation may also be suspended in connection with pastoral schemes and orders⁸.

1 Ibid under the powers conferred by the Pastoral Measure 1968, s 67: see PARA 813 post.

2 Ibid s 68 (1). In appointing sequestrators the bishop must ensure that one of the persons appointed is specially qualified by training or experience to discharge efficiently the duties of his office: s 68 (1). For the powers and duties of the sequestrators appointed, see PARA 815 post.

3 Ibid s 68 (2).

4 Ibid s 68 (2). As to what amounts to consultation, see PARA 987 note 5 post, and PARA 1110 note 15 post.

5 Ibid s 68 (3).

6 See ibid s 69.

7 Ibid s 69 (4).

8 See ibid s 69. See also the Pastoral Reorganisation Measure 1949, ss 7-9 (repealed), and the Pastoral Measure 1968, s 94, Sch. 8 para 9.

UPDATE

714 Appointment of curate when presentation is suspended

NOTE 1--1968 Measure consolidated in Pastoral Measure 1983; see s 67; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21.

NOTES 2, 3--Now 1983 Measure s 68 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 14); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 22.

TEXT AND NOTE 4--Now ibid s 68(2); Patronage (Benefices) Measure 1986 Sch 4 para 19, substituting 'registered patron' for 'patron'. As to the meaning of 'registered patron', see the 1983 Measure s 87(1) (para 872).

TEXT AND NOTE 5--Now the bishop may appoint a priest in charge of the benefice and may require the priest to reside in the parsonage house of the benefice: ibid s 68(4). Where the bishop proposes to appoint a priest in charge for any benefice to which a

suspension period applies, he must before making the appointment consult the parochial church council of the parish or each of the parishes concerned and, so far as is reasonably practicable, the patron of the benefice: *ibid* s 68(3).

NOTES 6-8--Now *ibid* s 69.

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715. Appointment of curate when benefice is sequestrated.

When a sequestration has issued under a judgment recovered against the incumbent of a benefice or under his bankruptcy, and remains in force for six months, the bishop may thereafter, so long as it remains in force, appoint and license for the due performance of the services of the church of the benefice one or more curates or additional curates as the case may require, with such stipend as he thinks fit specified in the licence and payable by the sequestrator out of money arising under the sequestration¹, and may at any time revoke any such appointment and licence².

1 Sequestration Act 1871, s 3.

2 Ibid s 1; Benefices (Ecclesiastical Duties) Measure 1926, s 19, Sch. 3. As to the rate of stipend, see s 14, and PARA 712 ante.

UPDATE

715 Appointment of curate when benefice is sequestrated

TEXT AND NOTES--1871 Act s 3 and 1926 Measure ss 14, 19 repealed: Endowments and Glebe Measure 1976 Sch 8. 1871 Act s 1 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(B) Appointment in Particular Circumstances/716. Employment of curate by non-resident incumbent.

716. Employment of curate by non-resident incumbent.

If a non-resident incumbent actually employs a curate the bishop may license him even though no express nomination of such a curate has been made by the incumbent to the bishop¹.

¹ Pluralities Act 1838, s 98. If the bishop declines to license him he will be unable to officiate: see PARAS 702, 706 ante. For the amount of the curate's stipend where the incumbent is non-resident, see PARA 707 et seq ante.

UPDATE

716 Employment of curate by non-resident incumbent

TEXT AND NOTE--Repealed: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(B) Appointment in Particular Circumstances/717. Appointment of curate by bishop where incumbent is non-resident.

717. Appointment of curate by bishop where incumbent is non-resident.

The bishop may appoint or license one or more curates to a benefice where the incumbent is non-resident for nine months in the year without lawful excuse¹ and fails to ensure that a curate performs the duties of the benefice². The licence must specify whether the curate is required to reside within the benefice or not³, but if the incumbent does not reside or does not satisfy the bishop of his intention to reside during four months in the year, the curate must normally reside within the benefice⁴.

A curate so appointed may be required to reside in the house of residence of the benefice, which may be assigned to him free of rent together with four acres of glebe land at a rent to be fixed by the archdeacon or rural dean and a neighbouring incumbent⁵. If the bishop has assigned to the curate a stipend not less than the whole value of the benefice and has directed him to reside in the house of residence, he is liable to the same rates and taxes as if he were the incumbent⁶. In other cases where the curate is directed so to reside, the bishop may require the incumbent to pay to the curate all or part of such rates or taxes as he actually has paid⁷. The order for payment of rates and taxes may be enforced by monition and both that order and the delivery of possession of the house may be enforced by sequestration of the profits of the benefice⁸. He must at any time give up possession of the house on six months' notice either from the incumbent with the bishop's written permission or from the bishop himself; or, in case of the benefice becoming vacant, on six weeks' notice from the new incumbent, if given within six months after admission to the benefice⁹.

In practice, as non-residence is usually due to disability arising from age or infirmity¹⁰ or to suspension or inhibition¹¹, the bishop, instead of exercising the foregoing powers, would probably exercise his other powers relating to these special cases¹².

1 An incumbent has a duty to reside on his benefice, but in certain circumstances may be excused from this duty: see PARA 692 et seq ante.

2 Pluralities Act 1838, s 75. As to stipend, see PARA 712 ante.

3 Ibid s 75 proviso.

4 Ibid s 76.

5 Ibid s 93.

6 Ibid s 94.

7 Ibid s 94 proviso.

8 Ibid ss 93, 94 proviso. The proceedings are taken in the consistory court: cf. para 682 note 3 ante.

9 Ibid s 96. If he refuses to give up the house, he is liable to pay to the incumbent £2 for every day of wrongful possession: s 96.

10 See the Incumbents (Disability) Measure 1945, s 3.

11 See the Ecclesiastical Jurisdiction Measure 1963, ss 49 (1), 71 (4).

12 See PARA 737 post.

UPDATE

717 Appointment of curate by bishop where incumbent is non-resident

TEXT AND NOTE 5--Reference to glebe land repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 6-8--Repealed: *ibid* Sch 8.

NOTE 10--Repealed, see now Incumbents (Vacation of Benefices) Measure 1977 (PARA 733A et seq).

NOTE 11--1963 Measure s 71 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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718. When two curates are required.

If the population of the benefice exceeds 2,000, or there are two or more churches belonging to it, not less than a mile apart, the bishop may require the non-resident incumbent to nominate two or more persons to be licensed as curates, and may, if the nomination is not made within three months after the requisition, appoint and license two or more curates with stipends; but an appeal from such a requisition or appointment lies within one month to the archbishop¹.

¹ Pluralities Act 1838, s 86; Pluralities Acts Amendment Act 1885, s 9; Benefices (Ecclesiastical Duties) Measure 1926, s 19, Sch. 3.

UPDATE

718 When two curates are required

TEXT AND NOTES--1926 Measure repealed: Endowments and Glebe Measure 1976 Sch 8. 1838 Act s 86, 1885 Act s 9 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(B) Appointment in Particular Circumstances/719. Appointment of curate where incumbent is under disability.

719. Appointment of curate where incumbent is under disability.

Where the ministerial committee of a diocese reports that an incumbent¹, through disability arising from age or bodily or mental infirmity, is unable to discharge adequately the duties of his benefice without assistance, the bishop may, with the incumbent's consent, appoint and license an assistant curate or curates, selected by the bishop, and direct that certain duties shall be discharged by such curate or curates instead of by the incumbent². If the incumbent fails to consent to the appointment of such a curate the bishop may declare the benefice vacant³.

- 1 This includes a curate in charge: Incumbents (Disability) Measure 1945, s 1 (2).
- 2 Ibid s 5 (1) (i), (ii); see PARA 736 post. As to stipends of such curates, see PARA 736 post.
- 3 Ibid s 6 (1): see PARA 737 post.

UPDATE

719 Appointment of curate where incumbent is under disability

TEXT AND NOTES--Repealed. See now Incumbents (Vacation of Benefices) Measure 1977 s 11 (see PARA 733E.2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(B) Appointment in Particular Circumstances/720. Appointment of curate when incumbent is suspended or inhibited.

720. Appointment of curate when incumbent is suspended or inhibited.

When a censure of suspension or inhibition has been pronounced against an incumbent¹, the bishop in whose diocese the incumbency is may appoint a person or persons to perform the incumbent's duties and may assign to him such part of the net stipend of the benefice as he thinks fit². If necessary the bishop may sequester the profits of the benefice for the payment of the stipend so assigned³. The person so appointed may be required by the bishop to reside in the parsonage house belonging to the benefice and the bishop may assign to him the use of the house together with the offices, gardens and appurtenances, or any part or parts of them without payment of any rent³. The person so residing is liable to pay the rates in respect of the house⁴.

Where possession of the premises assigned to a curate under the foregoing provisions is not given up to him, and until possession is given up, the bishop may direct that the profits of the benefice arising from sequestration are to be applied as if they arose under a sequestration for non-residence⁵.

1 As to such censures, see PARAS, 1377, 1378 post.

2 Ecclesiastical Jurisdiction Measure 1963, s 71 (4).

3 Ibid s 72 (1). The right of residence determines with his appointment: s 72 (4).

4 Ibid s 72 (2). Any sequestrator appointed has the power to deduct from the person's stipend any payments for which he is liable under this provision: s 72 (2); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2.

5 Ecclesiastical Jurisdiction Measure 1963, s 72 (3).

UPDATE

720 Appointment of curate when incumbent is suspended or inhibited

TEXT AND NOTES--1963 Measure ss 71, 72 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 2--Now the bishop may assign such part as he thinks fit of any one or more of the following, ie the guaranteed annuity, the personal grant, if any, and the profits of the benefice: Endowments and Glebe Measure 1976 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(C) Duration and Termination of Curacy/721. Termination of curacy by incumbent.

(C) DURATION AND TERMINATION OF CURACY

721. Termination of curacy by incumbent.

With the bishop's previous written consent an incumbent, whether resident or non-resident, can determine the curacy of any curate by six months' notice; and, if the bishop refuses such permission to a resident incumbent or a non-resident incumbent who desires to reside on his benefice, he may within one month appeal to the archbishop of the province, who will confirm the refusal or grant the permission as may seem proper¹.

¹ Pluralities Act 1838, s 95; Pastoral Measure 1968, s 95, Sch. 9. The incumbent's notice need not be formally served and, it seems, need not be in writing: *Tanner v Scrivener* (1888) 13 PD 128. Where a curate is temporarily employed without a licence (see PARA 706 note 1 ante), he is removable at pleasure: *Martyn v Hind* (1779) 2 Cowp 437 at 440, per Lord Mansfield CJ.

UPDATE

721 Termination of curacy by incumbent

TEXT AND NOTE--Where a licence is granted for a specified term of years under Church of England (Miscellaneous Provisions) Measure 1976 s 2(1), the incumbent may give the curate notice to quit before the expiration of the term in accordance with Pluralities Act 1838 s 95; 1976 Measure s 2(2).

The power conferred by the 1838 Act s 95 must not be exercised by reason of any act or omission referred to in the Clergy Discipline Measure 2003 s 8(1) (see PARA 1350A): Pluralities Act 1838 s 95 2nd proviso (added by 2003 Measure s 44(1)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(C) Duration and Termination of Curacy/722. Termination of curacy by bishop.

722. Termination of curacy by bishop.

For any cause which appears to him good and reasonable a bishop may at any time summarily revoke a curate's licence and remove him after having given him an opportunity of showing reason to the contrary¹, subject to the curate's right to appeal against the revocation within one month to the archbishop of the province². Provisions specially affecting the appointment of curates under certain statutes³ are discussed elsewhere⁴.

1 Pluralities Act 1838, s 98; Revised Canons Ecclesiastical, Canon C12 para 5; *Poole v Bishop of London* (1859) 5 Jur NS 522; *Baddeley's Case* (1872) cited in Phillimore, *Ecclesiastical Law* (2nd Edn) at 439. The licence may be revoked for a crime without the curate having been convicted of it in a temporal court: *Re Sinyanki* (1864) 12 WR 825. A notice of revocation must be served on the curate: Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 10 (1). A copy of the revocation must be entered in the diocesan registry and deposited in the parish chest: Pluralities Act 1838, s 102; Ecclesiastical Fees Measure 1962, s 8, Schedule, Part I: see PARA 708 ante. During a vacancy in the see the bishop's powers are exercisable by the archbishop: Clergy (Ordination and Miscellaneous Provisions) Measure 1964, ss 10, 12; Revised Canons Ecclesiastical, Canon C12 para 5.

2 Pluralities Act 1838, s 98 proviso; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 10 (2); Revised Canons Ecclesiastical, Canon C12 para 5 proviso. During a vacancy in the see there is no right of appeal: Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 10 (2); Revised Canons Ecclesiastical, Canon C12 para 5. As to appeals to the archbishop see the Pluralities Act 1838, s 111. Before giving his decision the archbishop must hear the curate personally or, if desired, by counsel: *R v Archbishop of Canterbury* (1859) 1 E & E 545. The archbishop's decision is final: *Poole v Bishop of London* (1861) 14 Moo PCC 262. It ought to be given on the same ground as that on which the bishop revoked the licence: *Re Sinyanki* (1864) 12 WR 825.

3 See under the Incumbents (Disability) Measure 1945, and the Ecclesiastical Jurisdiction Measure 1963.

4 See PARAS 719, 720 ante, 736 post.

UPDATE

722 Termination of curacy by bishop

TEXT AND NOTES 1, 2--Repealed: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(2), Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 3--The former repealed. See now Incumbents (Vacation of Benefices) Measure 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/C. CURATES' CONDITIONS OF APPOINTMENT/(C) Duration and Termination of Curacy/723. Termination of curacy by curate.

723. Termination of curacy by curate.

A curate may quit his curacy at the expiration of three months after he has given notice of his intention so to do to the incumbent of the benefice and the bishop, or sooner with the bishop's written consent¹.

¹ Pluralities Act 1838, s 97. If he quits earlier, he is liable to pay to the incumbent such sum not exceeding his stipend for six months as the bishop, in his discretion, specifies in writing, and the incumbent may deduct the sum from his stipend or recover it by action of debt: s 97.

UPDATE

723 Termination of curacy by curate

TEXT AND NOTE--Where a licence is granted for a specified term of years under the Church of England (Miscellaneous Provisions) Measure 1976 s 2(1), the curate may quit the curacy before the expiration of the term in accordance with Pluralities Act 1838 s 97: 1976 Measure s 2(2).

Curate who quits curacy without notice no longer liable to pay penalty under 1838 Act s 97: 1838 Act s 97; Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/D. LECTURERS OR PREACHERS/724. Status of lecturer or preacher.

D. LECTURERS OR PREACHERS

724. Status of lecturer or preacher.

A lecturer or preacher is a person in holy orders, elected or otherwise appointed for the special purpose of delivering lectures or preaching sermons in the church or chapel of a parish. He must be licensed by the bishop or the archbishop of the province¹; but where there is a right to elect or appoint a lecturer or preacher, the bishop is bound to license him, if he is orthodox, an honest liver and loyal². Before being licensed he must make the same declaration against simony and take the same oath of allegiance as is required of an incumbent before he is admitted to a benefice³, and before being licensed must make and subscribe the declaration of assent in the presence of the bishop by whom he is to be licensed or of the bishop's commissary⁴. Unless there is an immemorial custom to the contrary, he cannot be elected or appointed without the incumbent's consent⁵.

1 Act of Uniformity 1662, s 15; Clerical Subscription Act 1865, s 15; *R v Bishop of London* (1811) 13 East 419; *R v Archbishop of Canterbury and Bishop of London* (1812) 15 East 117.

2 Churchwardens of St Bartholomew's Case (1700) 3 Salk 87; *R v Bishop of London* (1743) 1 Wils 11 at 15; *R v Bishop of London* (1811) 13 East 419; *R v Archbishop of Canterbury and Bishop of London* (1812) 15 East 117. The remedy of a lecturer who is not permitted to exercise the office is by mandamus: *R v Barker* (1762) 1 Wm Bl 352, per Lord Mansfield CJ.

3 Clerical Subscription Act 1865, s 5; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2. The oath of allegiance may be dispensed with by the bishop in the case of certain overseas clergymen and those episcopally ordained in other churches: see PARAS 667, 669 ante. See PARA 660 ante.

4 Revised Canons Ecclesiastical, Canon C15 para 1 (5) (substituted by Amending Canon No. 4). As to the declaration, see PARA 660 ante.

5 *R v Bishop of London* (1743) 1 Wils 11; *R v Bishop of London* (1786) 1 Term Rep 331; *R v Field* (1791) 4 Term Rep 125; *R v Bishop of Exeter* (1802) 2 East 462; *Clinton v Hatchard* (1822) 1 Add 96. As to the appointment of the hour of the lecture, see *R v Bathurst* (1760) 1 Wm Bl 210.

UPDATE

724 Status of lecturer or preacher

TEXT AND NOTE 3--The declaration against simony is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1 Schedule; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/D. LECTURERS OR PREACHERS/725. Transfer of lectures.

725. Transfer of lectures.

If a parish church in which the lectures of an endowed lectureship have been customarily preached is taken down or ceases to be a parish church, those lectures must be preached in the church which becomes the parish church¹; or the transfer of the lectures to other churches may be effected by schemes prepared by the bishop and approved by the Charity Commissioners, and assented to in writing by the incumbents of those other churches².

¹ Union of Benefices Measure 1923, s 30 (repealed). The consent of the incumbent of the new parish church is still required: s 30 (repealed).

Although these provisions are repealed they continue in force insofar as any scheme or order is pending on 1st April 1969: Pastoral Measure 1968, ss 94, 95, 96 (3), Sch. 8. Thereafter it would appear that the transfer would be accomplished under s 27.

² Union of Benefices Measure 1923, s 30 (repealed): see note 1 supra. For similar provisions applicable to London, see the Union of Benefices Act 1860, s 26 (repealed): see note 1 supra.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/D. LECTURERS OR PREACHERS/726. Obligation to perform other duties.

726. Obligation to perform other duties.

With the assent of the incumbent, the bishop may require a lecturer or preacher to perform other clerical or ministerial duties as assistant curate or otherwise within the benefice¹.

¹ Lecturers and Parish Clerks Act 1844, s 1; Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5. The fact of a lecturer or preacher being required to perform other clerical or ministerial duties in a parish does not relieve an incumbent from any legal obligation which may rest upon him to employ a curate or other assistant: Lecturers and Parish Clerks Act 1844, s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/727. Different kinds of chaplains.

E. CHAPLAINS

727. Different kinds of chaplains.

A chaplain is a clergyman who performs divine service in a chapel¹. Besides the ministers of chapels of ease² and proprietary chapels³, who in a sense are chaplains, there are chaplains in England⁴ of the Royal Navy, the Regular Army, the Territorial Army Volunteer Reserve, the Royal Air Force, cemeteries⁵, hospitals⁶, prisons⁷, other institutions and of the Sovereign and other individuals.

1 Termes de la Ley 110. The title is commonly used of one who depends upon the Sovereign or other person of quality for the instruction of him and his family, and the reading of prayers and preaching in his private house where there is a chapel for that purpose: Termes de la Ley 110.

2 See PARA, 1226 post.

3 See PARA 1227 post.

4 As to chaplains abroad, cf. para 319 ante.

5 See CREMATION AND BURIAL vol 10 (Reissue) PARA 1038.

6 The appointment of officers in hospitals is governed by the National Health Service Act 1946, s 12.

7 See the Prison Act 1952, ss 7, 9, and PRISONS vol 36(2) (Reissue) PARA 584.

UPDATE

727 Different kinds of chaplains

NOTE 6--Repealed: National Health Service Reorganisation Act 1973 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/728. Naval chaplains.

728. Naval chaplains.

Chaplains in the Royal Navy hold no naval rank; they retain in the Navy the position to which their office would entitle them on shore¹. Their duties and powers are laid down in the Queen's Regulations for the Royal Navy². The Chaplain of the Fleet is granted the ecclesiastical dignity of archdeacon, under the Archbishop of Canterbury, while holding the office.

1 Queen's Regulations for the Royal Navy (1967), art. 0103.

2 See the Queen's Regulations for the Royal Navy (1967), Chapter 44.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/729. Army and air force chaplains.

729. Army and air force chaplains.

The duties of chaplains and officiating clergymen in the Army, the Territorial Army Volunteer Reserve and the Royal Air Force are laid down in the Queen's Regulations for the Army¹, the Territorial Army Volunteer Regulations² and the Queen's Regulations for the Royal Air Force³ respectively.

The army chaplains, except Roman Catholics, are under the supervision of the Chaplain General to the Forces. Air force chaplains belonging to the Church of England are under the control of the Chaplain-in-Chief. The Chaplain General and the Chaplain-in-Chief hold the dignity of archdeacon under the Archbishop of Canterbury.

1 Queen's Regulations for the Army 1961, PARAS. J1432-J1442.

2 Territorial Army Volunteer Regulations 1967 paras 1199, 1199/1, 1199/26, Sch. X, Sch. XIV para 25, and Sch. XVIII paras 5-9.

3 Queen's Regulations for the Royal Air Force (1964) PARA 100, chapter 13, sect. 2, and App. 33B.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/730. Army and air force stations.

730. Army and air force stations.

With the consent of the bishop of the appropriate diocese army and air force stations may be constituted extra-parochial districts¹ and declared by Order in Council to be under the exclusive jurisdiction of an archbishop or bishop². The Secretary of State may appoint any army or air force chaplain³, as the case may be, to perform the functions of chaplain in any such district⁴. A chapel erected and consecrated in the district becomes an extra-parochial chapel⁵.

Where a building has been certified by the Secretary of State to the bishop of the diocese as used or intended to be used by the army or air force as an unconsecrated chapel, the Secretary of State may appoint any army or air force chaplain, as the case may be, to perform all the functions of a chaplain in it so long as the building is so used⁶.

1 As to extra-parochial areas see PARA 536 ante.

2 Army Chaplains Act 1868, ss 4, 9. This Act was extended to the Royal Air Force by the Air Force (Application of Enactments) (No. 2) Order 1918, S.R. & O. 1918 No. 548. There is a Bishop to the Forces, at present the Bishop of Croydon.

3 'Army chaplain' means a commissioned chaplain to Her Majesty's military forces in holy orders: Army Chaplains Act 1868, s 2.

4 Ibid s 6.

5 Ibid s 7. No Royal Air Force chapels are in fact consecrated.

6 Ibid s 8. This power is apparently in derogation of an incumbent's rights: see PARAS 690, 691 ante.

UPDATE

730 Army and air force stations

NOTE 2--1868 Act s 4 amended: Patronage (Benefices) Measure 1986 s 34(4) Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/731. Chaplains at institutions generally.

731. Chaplains at institutions generally.

The bishop of a diocese¹ in which any university, college, school², hospital or public or charitable institution is situated, whether or not it possesses a chapel, may license a clergyman of the Church of England to perform such offices and services as may be specified in the licence on any premises forming part of or belonging to the institution in question, including residential premises managed by the institution and occupied by the members or staff of the institutions³. The licence may not extend to the solemnisation of marriages⁴, and may be revoked at any time by the bishop⁵.

1 During the vacancy of a see the bishop's powers are exercisable by the guardian of the spiritualities: Vacancies in Sees Measure 1959, s 2 (1). As to this guardian, see PARA 489 ante.

2 The chapels and chaplains of certain public schools are free from the jurisdiction of the incumbent: Public Schools Act 1868, s 31; Extra-Parochial Ministry Measure 1967, s 2 (5); Education Act 1973, s 1 (4), Sch. 2, Part II: see EDUCATION vol 15(1) (2006 Reissue) PARA 509.

3 Extra-Parochial Ministry Measure 1967, s 2 (1); Revised Canons Ecclesiastical, Canon B41 para 2. The performance of offices and services in accordance with such a licence does not require the consent, nor is it subject to the control of, the incumbent: Extra-Parochial Ministry Measure 1967, s 2 (2); Revised Canons Ecclesiastical, Canon B41 para 3. Any alms are to be disposed of in such manner as the clergyman performing the office or service, subject to the direction of the bishop, may determine: Extra-Parochial Ministry Measure 1967, s 2 (3). Any licence granted under the Private Chapels Act 1871 (repealed) continues and remains in force as if granted under the Extra-Parochial Ministry Measure 1967: s 4. See also PARA 666 ante.

4 Ibid s 2 (1); Revised Canons Ecclesiastical, Canon B41 para 2.

5 Extra-Parochial Ministry Measure 1967, s 2 (4).

UPDATE

731 Chaplains at institutions generally

NOTE 1--1959 Measure s 2 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTE 3--Without prejudice to the 1967 Measure s 2, a person licensed to perform funeral services on premises forming part of or belonging to a university, college, school, hospital or public or charitable institution may perform a funeral service in any crematorium or cemetery if the deceased person was resident in any such premises or was employed by or enrolled as a student at the institution in question immediately before his death: Church of England (Miscellaneous Provisions) Measure 1992 s 2(3).

TEXT AND NOTE 4--Where a clergyman of the Church of England is licensed under 1967 Measure s 2(1) to perform specified offices and services at an institution, and the marriage of a person who is house-bound or detained is to be solemnised, according to the rites of the Church of England, at that institution in pursuance of Marriage Act 1949 s 26(1)(dd) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 54), the offices and services which the clergyman is licensed to perform will now be treated as including the solemnisation of that marriage: 1967 Measure s 2(1A); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(iv) Unbeneficed Clergy/E. CHAPLAINS/732. Royal, official and private chaplains.

732. Royal, official and private chaplains.

The Sovereign and peers of the realm, and certain other persons of position and dignity, have the right to appoint chaplains to serve in their own private chapels¹ and households². The Speaker of the House of Commons appoints a chaplain to read prayers each day when the House meets for business, and to attend him on state occasions³.

The clerical staff of the chapels royal consists of a dean, sub-dean, clerk and deputy clerks of the closet, domestic chaplains, chaplains in ordinary and honorary chaplains, priests in ordinary, honorary priests and deputy priests.

Royal chaplains and clerks in the royal chapels are not liable to penalties for nonresidence on a benefice⁴.

A private chaplain is only permitted to celebrate Holy Communion in the chapel of the house in which he is chaplain⁵.

1 As to these, see PARA 1227 post.

2 Gib Cod 908, 909. The right exists in common law: see eg *Drury's Case* (1601) 4 Co Rep 89b at 90a; *Acton's Case* (1603) 4 Co Rep 117a at 118a. As to the distinction between Queen's chaplains ordinary and extraordinary, see *Brown v Mugg* (1702) 1 Salk 161. A Queen's chaplain or priest in ordinary is privileged from arrest on civil process: *Byrn v Dibdin* (1835) 1 Cr M & R 821; *Winter v Dibdin* (1844) 13 M & W 25; *Harvey v Dakins* (1849) 3 Exch 266; *Swan v Dakins* (1855) 16 CB 77.

3 Erskine May, Parliamentary Practice (18th Edn) 263.

4 Pluralities Act 1838, s 38.

5 Revised Canons Ecclesiastical, Canon B41 para 1. He must do so 'seldom' on Sundays and feast days, so that the residents of the house may be encouraged to attend their parish church: Canon B41 para 1. For a case of the confirmation by the Court of Delegates of the consecration of a private chapel in a nobleman's house, subject to conditions, see *Viscount Kilmorey v Corbett* (1634) Rothery's Precedents, No. 35, p. 14. See also PARA 666 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733. Procedure where incumbent is under disability.

(v) Disability of Mind or Body

733. Procedure where incumbent is under disability.

In any case where the bishop¹ is satisfied that such action is proper he may instruct the ministerial committee of his diocese² to consider and report to him whether in its opinion an incumbent³ is unable to discharge adequately the duties attaching to his benefice⁴ through disability arising from age or infirmity, whether bodily or mental, and if so whether it is desirable (1) that he should be given assistance in discharging those duties, or (2) that he should resign his benefice⁵. If the committee recommends the latter course it must consider what additional pension, if any, should be payable to him⁶.

The instruction to the committee from the bishop must be in writing⁷ and a copy of it must at the same time be sent to the incumbent⁸.

The bishop may if he so desires appoint in writing a clerk in holy orders as his representative to attend the meetings of the committee when invited by it to do so⁹.

1 The bishop of the diocese in which the benefice concerned is situate: Incumbents (Disability) Measure 1945, s 1 (3). A bishop may act as bishop for the purposes of this Measure, even though he is patron of the benefice held by the incumbent concerned: s 14.

2 A ministerial committee must be constituted in every diocese consisting of duly elected clerks in holy orders beneficed or licensed under seal to officiate within the diocese in which the committee is constituted: *ibid* s 2. As to the election of members and the procedure, see PARAS 734, 735 post.

3 'Incumbent' includes in relation to a benefice a rector with cure of souls, vicar, perpetual curate, curate in charge or minister: *ibid* s 1 (2).

4 For the meaning of 'benefice', see *ibid* s 1 (1), and PARA 768 note 1 post.

5 *Ibid* s 3 (1). As to incumbents charged with an ecclesiastical offence, see PARA 1350 et seq post. The Incumbents (Disability) Measure 1945 extends to the whole of the provinces of Canterbury and York, except the Channel Islands (unless applied to either of them before 15th November 1947) and the Isle of Man: see s 16 and Order in Council dated 28th October 1947 extending the Measure to Guernsey; generally as to the application of Measures to the Channel Islands, see PARA 402 ante.

6 Incumbents (Disability) Measure 1945, s 3 (1). For the pensions payable, see PARA 738 et seq post.

7 *Ibid* s 3 (1). Annual fees payable to bishops' legal secretaries include payment for work done by them in connection inter alia with these matters: Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, App. I (ii), made under the Ecclesiastical Fees Measure 1962, s 1.

8 Incumbents (Disability) Measure 1945, s 3 (1). Any notice or other document required to be sent or given to an incumbent under this Measure is deemed to have been duly sent or given if sent through the post in a prepaid registered letter addressed to the parish or place of which he is incumbent: s 13.

9 *Ibid* s 3 (2).

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733A. Disability.

733A. Disability.

The Incumbents (Vacation of Benefices) Measure 1977 (amended by the Incumbents (Vacation of Benefices) (Amendment) Measure 1993) makes provision, including provision for vacation of the benefice, where there has been a serious breakdown of the pastoral relationship between an incumbent and his parishioners or where an incumbent is unable because of age or infirmity to discharge adequately the duties attaching to his benefice; the Measures extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man, but may be applied to the Channel Islands and may extend to the Isle of Man if an Act of Tynwald or an instrument made in pursuance of such an Act so provides: Incumbents (Vacation of Benefices) Measure 1977 s 21(2); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 ss 11, 16.

1. Code of Practice for reconciliation and request for inquiry into pastoral situation in a parish

It is the duty of the House of Bishops to draw up rules of guidance¹ to promote better relations between the incumbent and the parishioners and remove the causes of their estrangement, and to promulgate the rules in a Code of Practice².

A request for an inquiry into the pastoral situation in a parish on the ground that there has been a serious breakdown of the pastoral relationship between the incumbent and the parishioners³, to which the conduct of the incumbent or of the parishioners, or of both, has contributed over a substantial period may be made by the incumbent of the benefice⁴ to which the parish belongs⁵. It may also be made by the archdeacon in whose archdeaconry the parish is⁶, or a majority of not less than two-thirds of the lay members of the parochial church council of the parish present and voting at a duly convened meeting of that council on a resolution that the request be made⁷.

Where the incumbent is also the archdeacon, a request for an inquiry may be made by a majority of the members of the bishop's council and standing committee of the diocesan synod of the diocese in which the parish is situated⁸. An inquiry can only be undertaken after the persons concerned have had an opportunity to resolve the pastoral situation in the parish in question, and a request for an inquiry must not be made unless notice of intention to make the request has been given by the person concerned to the bishop of the diocese in which the parish in question is at least six months, and not more than twelve months, before the request is made⁹.

A request for such an inquiry, and a notice of intention to make it, must be made or given in writing to the bishop of the appropriate diocese and, in the case of a request, the secretary of the diocesan synod of that diocese and should contain particulars justifying an inquiry¹⁰.

¹ le for the purposes of the Incumbents (Vacation of Benefices) Measure 1977 generally and, in particular, as to the steps which the House considers should be taken where the bishop of a diocese receives notice of intention to make a request under *ibid* s 1A: *ibid* s 1(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 1.

² 1977 Measure s 1(1); 1993 Measure s 1. The House may at any time amend or replace a Code of Practice by a further Code of Practice: 1977 Measure s 1(2); 1993 Measure s 1.

3 le a situation where the relationship between an incumbent and the parishioners of the parish in question is such as to impede the promotion in the parish of the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical: 1977 Measure s 19A; 1993 Measure s 10.

4 Benefice means the office of rector or vicar, with cure of souls, including the office of vicar in a team ministry established under the Pastoral Measure 1968 or the Pastoral Measure 1983, but does not include any office in a Royal Peculiar nor the office of dean or provost of a parish church cathedral within the meaning of the Cathedrals Measure 1963: 1977 Measure s 19; 1993 Measure s 14, Sch 3.

5 1977 Measure s 1A(1)(a). Ibid s 1A is as renumbered and amended by the 1993 Measure ss 1, 2, 14, Sch 3. As to the relationship between proceeding under the 1977 Measure and the making of a pastoral scheme under the Pastoral Measure 1983 s 17, see *Cheesman v Church Comrs* [1999] 3 WLR 630, PC.

6 1977 Measure s 1A(1)(b).

7 Ibid s 1A(1)(c).

8 Ibid s 1A(1)(d).

9 Ibid s 1A(1A).

10 Ibid s 1A(2). For details of request and notice of intention to make it, made or given under s 1A(1)(c), (d) see s 1A(3)-(5). On receipt of such request or notice the secretary of the diocesan synod must notify the incumbent unless it was he who made the request or gave the notice and similarly the archdeacon and the secretary of the parochial church council: s 1A(6). As to the withdrawal of the request, see s 1A(7).

2. Preliminary action to be taken by archdeacon

Where the bishop of a diocese receives a request for such an inquiry he must direct the archdeacon in whose archdeaconry the parish in question is situated¹ to remove the causes of their estrangement².

Not more than six weeks after receiving the directions of the bishop the archdeacon must report to the bishop whether in his opinion an inquiry would be in the best interest of the incumbent and the parishioners and should accordingly be instituted, and the archdeacon, in making his report to the bishop, must have regard to the extent to which the current Code of Practice³ has been complied with⁴.

The bishop must inform the secretary of the diocesan synod of the archdeacon's opinion and direct him to inform the incumbent, the secretary of the parochial church council and the designated representative, if any, of it⁵.

1 Where the archdeaconry is vacant the bishop must appoint another archdeacon in the diocese to act: Incumbents (Vacation of Benefices) Measure 1977 s 2(2). This provision is not affected by Church of England (Miscellaneous Provisions) Measure 1983 s 9; see PARA 499A.

Where the archdeacon is of the opinion that it would not be right or expedient for him to act, he must inform the bishop who will appoint another archdeacon in the diocese to act in his place: 1977 Measure s 2(3).

2 Ibid s 2(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3. Unless the request for an inquiry was made by the archdeacon or he is the incumbent: 1977 Measure s 2(1).

3 As to which see PARA 733A.1.

4 1977 Measure s 2(5); 1993 Measure s 14, Sch 3.

5 1977 Measure s 2(6).

3. Institution of inquiry

The bishop may, if he thinks fit, direct the secretary of the diocesan synod to institute such an inquiry where (1) the request for an inquiry was made by the archdeacon in whose

archdeaconry the parish in question is situated, or that archdeacon is the incumbent; or (2) the archdeacon appointed to act as conciliator¹ reports that such an inquiry should be instituted; or (3) within six months of making his report the archdeacon informs the bishop that although he reported to the contrary he now considers that an inquiry is required; or (4) within six months of the making of the archdeacon's report the incumbent informs the bishop that, notwithstanding the archdeacon's report to the contrary, an inquiry is required².

The inquiry must be conducted by a provincial tribunal for the province in which the parish in question is situated³.

Where a request for an inquiry has been made, the incumbent may ask the bishop to accept his resignation⁴ at any time before the bishop notifies him of the action he proposes to take following the report of the inquiry⁵. If his resignation is accepted no further steps will be taken in connection with the inquiry⁶.

1 Ie under the Incumbents (Vacation of Benefices) Measure 1977 s 2.

2 Ibid s 3; Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 3. If, within the period of six months after the relevant date, the bishop neither gives a direction nor notifies the secretary that he has decided not to give a direction, a direction is deemed to have been given: 1977 Measure s 3(1A); 1993 Measure s 3. 'Relevant date' means (i) in either of the cases in head (1) above, the date on which the request was made, (ii) in the case in head (2) above, the date on which the report was made, or (iii) in the case in head (3) or (4) above, the date on which the bishop is informed that, notwithstanding that the archdeacon did not report that in his opinion an inquiry should be instituted, such an inquiry is nevertheless required: 1977 Measure s 3(1B); 1993 Measure s 3.

3 1977 Measure s 5; 1993 Measure s 14, Sch 3.

4 Once the incumbent has been informed that his resignation has been accepted, he must execute a deed resigning his benefice as from the date specified in the deed. This date may not be more than three months after the date on which the incumbent was informed that his resignation had been accepted. He must then vacate his official residence not later than three months after the date specified in the deed: 1977 Measure s 4(1), (2).

5 Ibid s 4(1). Ie notification under s 12(1) (see PARA 733E.2).

6 Ibid s 4(3). The secretary of the diocesan synod, the secretary of the parochial church council, any delegated representative and if necessary, the archdeacon in whose archdeaconry the parish is and the members of the body of inquiry must be informed: s 4(3).

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733B. Institution of inquiry into disability of incumbent.

733B. Institution of inquiry into disability of incumbent.

The bishop may instruct¹ the secretary of the diocesan synod to institute an inquiry as to whether an incumbent is unable to discharge adequately the duties attaching to his benefice through disability arising from age or infirmity of mind or body and if so whether it is desirable that he should resign his benefice or be given assistance in discharging his duties². An inquiry must be conducted by a provincial tribunal for the province in which the benefice in question is situated³.

¹ By notice in writing: Incumbents (Vacation of Benefices) Measure 1977 s 6(1).

² Ibid s 6(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3. 1977 Measure s 6 does not apply to an incumbent who is also (a) a suffragan bishop to whom the Bishops (Retirement) Measure 1986 applies; or a dean, provost or archdeacon to whom the Church Dignitaries (Retirement) Measure 1949 applies: Incumbents (Vacation of Benefices) Measure 1977 s 6(2); 1993 Measure s 14, Sch 3.

³ 1977 Measure s 6(1A); 1993 Measure s 14, Sch 3.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733C. Inquiries and subsequent proceedings.

733C. Inquiries and subsequent proceedings.

1. Constitution of provincial tribunals

A provincial tribunal consists of five persons appointed by the vicar-general of the province in which the parish in question is situated¹. The chairman is either the chancellor of a diocese in the province for which the tribunal is to be appointed, other than the diocese in which the parish in question is situated, or a Queen's Counsel who is also a communicant member of the Church of England². Two members are clerks in holy orders from the panel appointed³ from the members of the lower House of the Convocation of the province concerned⁴. The remaining members are lay persons from the panel appointed⁵ from the members of the House of Laity of the General Synod⁶. No person who is ordinarily resident in the diocese in which the parish in question is or whose name is entered on the electoral roll of any parish of that diocese or who is a clerk in holy orders authorised to exercise his ministry in any such parish is to be appointed⁷.

Where the secretary of the diocesan synod is required to institute an inquiry, he must request the vicar-general of the province to constitute a provincial tribunal and to send him a list of the names and addresses of proposed members⁸. Any person appointed to serve as a member of the tribunal from a panel mentioned above may refuse to accept the appointment if in his opinion it would not be right for him to serve as a member of the tribunal⁹. On receiving the list of names of proposed members, the secretary must send a copy of it to the incumbent concerned and must inform him of his right of objection and of the period within which the right must be exercised¹⁰.

The incumbent may, within three weeks after the list is sent to him, object to any of the proposed members by sending a written notice to the secretary of the diocesan synod specifying the members to whom he objects and his grounds¹¹. The matter must then be referred to the vicar-general of a province other than the province for which the tribunal is to be appointed, for him to determine whether the objection is reasonable¹².

Where it is decided that the objection should be allowed the secretary of the diocesan synod must request the vicar-general of the province in which the parish in question is situated to appoint an alternative member¹³. The incumbent must be informed of the identity of the proposed member and may object in the same manner as above¹⁴.

As soon as the provincial tribunal has been constituted a list of the members must be sent to the incumbent and certain other persons¹⁵.

1 Incumbents (Vacation of Benefices) Measure 1977 s 7, Sch 1 para 1(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 ss 12, 14, Schs 1, 3. Where, in the course of an inquiry conducted by a provincial tribunal, a member of the tribunal other than the chairman dies or becomes unable to act as a member by reason of illness or other incapacity, the tribunal may, with the consent of the parties, continue to conduct the inquiry in the absence of that member: 1977 Measure s 7 proviso.

2 Ibid Sch 1 para 1(2)(a).

3 Ie under the Pastoral Measure 1983 Sch 4 para 15(1)(b) (see PARA 890).

4 1977 Measure Sch 1 para 1(2)(b).

5 Ie under the 1983 Measure Sch 4 para 15(1)(c) (see PARA 890).

6 1977 Measure Sch 1 para 1(2)(c).

7 Ibid Sch 1 para 1(2) proviso.

8 Ibid Sch 1 para 2(1).

9 Ibid Sch 1 para 2(2).

10 Ibid Sch 1 para 2(3).

11 Ibid Sch 1 para 3(1).

12 Ibid Sch 1 para 3(2). The vicar-general's decision is final: Sch 1 para 3(2). For the purpose of enabling him to decide whether the objection is reasonable, the vicar-general may require the incumbent to supply him with such information as he may specify: Sch 1 para 3(3).

13 Ibid Sch 1 para 3(4).

14 Ibid Sch 1 para 3(4), (5). The incumbent is not entitled to object to a person appointed under Sch 1 para 3(4) from a panel mentioned in TEXT AND NOTES 3, 5 above if, were the objection to be allowed, the result would be that the tribunal could not be constituted, there being no other person on the appropriate panel available for appointment as a member of the tribunal: Sch 1 para 3(6).

15 Ibid Sch 1 para 4. The synodical secretaries of the Convocations of Canterbury or York, or their nominees, are under a duty to act as secretaries of any tribunals conducting inquiries into the pastoral situation in parishes in the provinces of Canterbury or York respectively: Sch 1 para 5.

2. Legal advice and representation

At any meeting of any provincial tribunal to which the incumbent is invited or at which he is entitled to be present, he may be assisted, or in his absence represented, by some other person, whether having professional qualifications or not¹.

At an inquiry into the pastoral situation in a parish the parties² may be represented by a barrister or solicitor³.

1 Incumbents (Vacation of Benefices) Measure 1977 s 7(4); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3.

2 Ie (a) the incumbent concerned, (b) the archdeacon in whose archdeaconry the benefice of the incumbent concerned is, (c) the parochial church council of the parish concerned or, in the case of an inquiry under the 1977 Measure Pt I requested by the persons mentioned in s 1A(1)(c) (see PARA 733A.1), the persons specified in the request as being willing to act as the representatives of the first-mentioned persons, (d) in the case of such an inquiry requested by the persons mentioned in s 1A(1)(d), the persons specified in the request as being willing to act as representatives of the first-mentioned persons: s 7(6); 1993 Measure s 14, Sch 3.

3 1977 Measure s 7(5); 1993 Measure s 14, Sch 3.

3. Medical examinations

The tribunal by which an inquiry is being conducted may direct that the incumbent concerned should undergo a medical examination¹ for the purpose of obtaining a report on his mental or physical condition². Where a tribunal gives a direction and the incumbent concerned fails to take any steps required of him for the purpose of giving effect to the direction, the tribunal may draw such inferences (if any) as appear proper in the circumstances, without prejudice to the drawing of any other inferences that may properly be drawn by the tribunal in the course of the inquiry³.

1 The examination must be in accordance with the Incumbents (Vacation of Benefices) Rules 1994, SI 1994/703, rr 11, 12: Incumbents (Vacation of Benefices) Measure 1977 s 7A(1), added by Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 5.

2 1977 Measure s 7A(1), as added. The tribunal may at any time revoke or vary a direction: s 7A(1).

3 Ibid s 7A(2).

4. Supplementary provisions with respect to an inquiry into the pastoral situation in a parish

In the case of such an inquiry the secretary of that diocesan synod must notify the secretaries of the parochial church councils of the parish to which the inquiry relates and of any other parish belonging to the benefice of which the incumbent concerned is the incumbent, of the institution of the inquiry and ask them whether those councils wish to make representations to the tribunal which is to conduct the inquiry: Incumbents (Vacation of Benefices) Measure 1977 s 8(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3. Each member of the tribunal must be supplied with a copy of the request for the inquiry and the tribunal must be informed whether or not any parochial church council wishes to make representations to it: 1977 Measure s 8(2); 1993 Measure s 14, Sch 3.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733D. Report to the bishop.

733D. Report to the bishop.

A tribunal conducting an inquiry into the pastoral situation in a parish must report to the bishop whether there has been a serious breakdown in the pastoral relationship between the incumbent and the parishioners and whether the conduct of the incumbent or the parishioners or both has contributed to the breakdown over a substantial period¹.

However, where it is considered that the incumbent is unable to discharge adequately his duties because of age or infirmity of mind or body, the tribunal may report to the bishop accordingly instead of reporting as above².

A tribunal conducting an inquiry into the disability of an incumbent must report to the bishop whether the incumbent is unable to discharge adequately the duties attaching to his benefice because of age or infirmity of mind or body³.

The tribunal must include in its report recommendations as to the action to be taken by the bishop⁴.

1 Incumbents (Vacation of Benefices) Measure 1977 s 9(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3.

2 1977 Measure s 9(2); 1993 Measure s 14, Sch 3.

3 1977 Measure s 9(3); 1993 Measure s 14, Sch 3.

4 1977 Measure s 9(4); 1993 Measure s 14, Sch 3. No recommendation may be made (a) that the bishop should execute a declaration of avoidance in relation to the benefice of the incumbent, see 1977 Measure s 10 (see PARA 733E.1), or (b) that the incumbent should resign his benefice (see s 11, PARA 733E.2), unless at least four members of the tribunal agree that the recommendation should be made: s 9(5); 1993 Measure s 14, Sch 3.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733E. Inhibition in disability cases.

733E. Inhibition in disability cases.

Where the bishop of a diocese has instructed the secretary of the diocesan synod to institute an inquiry¹ or the tribunal by which an inquiry² was conducted has reported to the bishop, and it appears to the bishop that it is desirable in the interests of the Church of England that he should take action, it is lawful for the bishop to serve a notice on the incumbent who is the subject of the inquiry inhibiting him from executing or performing without the consent of the bishop any right or duty of or incidental to his office specified by the bishop³.

Where the tribunal has reported to the bishop that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, a notice of inhibition must not be served after the expiry of the period of three months following the making of the report unless (1) the bishop has notified the incumbent that it is desirable that he should resign his benefice, in which case a notice may be served at any time before he ceases to be the incumbent, or (2) the bishop has given the incumbent leave of absence, in which case a notice may be served at any time during the leave of absence⁴.

A notice ceases to have effect (1) if it is served before the tribunal makes its report to the bishop, on the making of the report unless it reports that the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice, or (2) on the expiry of the period of three months following the making of the report to the bishop unless the bishop has notified the incumbent that it is desirable that he should resign his benefice or given the incumbent leave of absence, or (3) if the bishop gives the incumbent leave of absence, on the expiry of the leave of absence, or (4) on the benefice of the incumbent becoming vacant⁵.

1 Ie under the Incumbents (Vacation of Benefices) Measure 1977 Pt II (see PARA 733B): s 9A(1), added by Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 6.

2 Ie an inquiry under the 1977 Measure Pt I (see PARA 733A): s 9A(1), as added.

3 Ibid s 9A(1), as added. A notice must not be served in the circumstances mentioned in TEXT AND NOTE 1 after the tribunal by which the inquiry was conducted has made its report to the bishop unless it reports that in its opinion the incumbent concerned is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice: s 9A(2), as added.

4 Ibid s 9A(3), as added.

5 Ibid s 9A(4), as added. The bishop may at any time revoke a notice of inhibition: s 9A(5), as added.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733F. Powers of the bishop following an inquiry.

733F. Powers of the bishop following an inquiry.

1. In cases of breakdown of pastoral relationship

If the tribunal recommends accordingly, the bishop may execute a declaration of avoidance declaring the benefice of the incumbent vacant as from a date specified in the declaration¹. He must disqualify the incumbent from executing or performing, without his consent, any right or duty of, or incidental to, the incumbent's office during the period beginning with the date on which the declaration is executed and ending on the date on which the benefice of the incumbent becomes vacant².

Where the tribunal reports that the breakdown of the pastoral relationship has been contributed to by the conduct of the incumbent over a substantial period the bishop may rebuke the incumbent³. He may also disqualify him from executing or performing without his consent any right or duty of, or incidental to the incumbent's office during a specified period⁴.

If the report concludes that the breakdown of the pastoral relationship is one to which the conduct of parishioners has contributed, the bishop may rebuke any of the parishioners and may, if he thinks fit, disqualify such of them as he thinks fit from being a church warden or member or officer of the parochial church council of the parish in question and of such other parishes in his diocese as he may specify during such period not exceeding five years as he may specify⁵.

In addition to his other powers, the bishop may give pastoral advice and guidance to the incumbent and the parishioners⁶.

1 Incumbents (Vacation of Benefices) Measure 1977 s 10(2); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 ss 7, 14, Sch 3. The date must be not less than three or more than six months after the date on which the declaration is made: 1977 Measure s 10(2).

Where the incumbent holds more than one benefice the bishop may include all the benefices in the declaration although the recommendation only related to one of them: s 10(3).

2 Ibid s 10(4).

3 Ibid s 10(5); 1993 Measure s 14, Sch 3. Where the bishop disqualifies an incumbent under 1977 Measure s 10(4), (5) he must make alternative provision for the discharge of his duties: s 10(8).

4 Ibid s 10(5).

5 Ibid s 10(6); 1993 Measure s 7. Where the bishop disqualifies a person who is or who becomes a lay member of a deanery synod, a diocesan synod or the General Synod from being a member of a parochial church council during any period, that person cannot be a member of that council by virtue of that lay membership during that period, notwithstanding the Church Representation Rules r 12(1)(e) (see PARA 569): 1977 Measure s 10(6A); 1993 Measure s 7. The bishop may revoke any disqualification effected under 1977 Measure s 10(5) or (6): s 10(9); 1993 Measure s 7.

6 1977 Measure s 10(7); 1993 Measure s 14, Sch 3.

2. In cases of disability of incumbent

Where the tribunal reports that the incumbent is unable to discharge adequately his duties because of age or infirmity of mind or body the bishop may (1) notify the incumbent that he should resign his benefice¹; or (2) with the incumbent's consent, appoint and license an

assistant curate to help the incumbent²; or (3) give the incumbent leave of absence for a maximum of two years³; or (4) make any other temporary provision for the discharge of the incumbent's duties⁴.

An incumbent who is to resign his benefice must execute a deed resigning it as from the date specified in the deed⁵. If the incumbent refuses or fails to resign within one month from the date of notification, the bishop must execute a declaration of avoidance declaring the benefice vacant as from the date specified in the declaration⁶.

1 Incumbents (Vacation of Benefices) Measure 1977 s 11(2)(a). This power may only be exercised on the tribunal's recommendation: s 11(3); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3. Where the incumbent holds more than one benefice, without prejudice to the Pastoral Measure 1983 s 18(4) (see PARA 853), the bishop may include all those benefices in the notification although the recommendation only related to one of them: 1977 Measure s 11(4).

2 Ibid s 11(2)(b). Where the incumbent refuses or fails to comply with a request or consent to the appointment of an assistant curate within one month of the request being made the bishop must execute a declaration of avoidance declaring the benefice vacant as from the date specified in the declaration, see NOTE 6; s 11(7); 1993 Measure s 14, Sch 3. Where the incumbent holds more than one benefice they may all be included in such a declaration: 1977 Measure s 11(8).

3 Ibid s 11(2)(c). The bishop may provide for the discharge of the duties attaching to the benefice during that period: s 11(2)(c).

4 Ibid s 11(1), (2)(d); 1993 Measure s 14, Sch 3.

5 1977 Measure s 11(5); 1993 Measure s 14, Sch 3.

6 1977 Measure s 11(6); 1993 Measure s 14, Sch 3, referring to a date not less than three or more than six months after the date on which the declaration is made. A writ of sequestration in respect of the profits of a benefice cannot be issued for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2)(c).

3. Supplementary provisions

As soon as practicable after the report of an inquiry has been received by the bishop, he must notify the incumbent of the action¹ he proposes to take, or that no action is required². He must similarly notify the archdeacon in whose archdeaconry the parish concerned is situated³, the secretary of the parochial church council of that parish and any designated representative⁴.

The incumbent of any benefice which has been declared vacant⁵ or which he has resigned⁶ must vacate his official residence not later than three months after the date specified in the declaration of avoidance or deed of resignation⁷.

Any declaration executed by the bishop⁸ must be filed in the registry of the diocese and a copy must be sent to the incumbent, the patron of the benefice and the Church of England Pensions Board⁹.

1 Ie under Incumbents (Vacation of Benefices) Measure 1977 s 10 or 11.

2 Ibid s 12(1).

3 Ibid s 12(1)(a). Unless he is the incumbent concerned: s 12(1)(a).

4 Ibid s 12(1).

5 Ie under ibid s 10 or 11.

6 In accordance with ibid s 11(5).

7 Ibid s 12(2).

8 le under ibid s 10 or 11.

9 Ibid s 12(3).

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733G. Compensation and pension provisions.

733G. Compensation and pension provisions.

Where after obtaining the agreement of the bishop¹ an incumbent resigns his benefice² or, after an inquiry into the pastoral situation in a parish the bishop has declared the benefice of an incumbent vacant³, the incumbent is, on application made in writing to the diocesan board of finance, entitled to compensation for any loss suffered by him in consequence of his resignation or the vacation of his benefice⁴.

Where (1) after an inquiry into the pastoral situation in a parish in which the tribunal reported⁵ to the bishop that the incumbent was unable to carry out his duties adequately because of age or infirmity or (2) after an inquiry into the disability of an incumbent, the incumbent concerned resigns his benefice⁶, or the bishop has declared the incumbent's benefice vacant⁷, the incumbent will be deemed⁸ to have become incapable through infirmity, of performing the duties of his office on the date on which his resignation took effect or the date on which by virtue of the declaration, his benefice became vacant⁹. He is also deemed to have satisfied the Church of England Pensions Board to this effect and that the infirmity was likely to be permanent¹⁰.

1 Ie under the Incumbents (Vacation of Benefices) Measure 1977 s 4(1): see PARA 733A.3.

2 Ie in accordance with *ibid* s 4(2): see PARA 733A.3.

3 Ie under *ibid* s 10: see PARA 733F.1.

4 *Ibid* s 13(1); Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 8. As to the form and amount of compensation, and the circumstances in which payments of compensation may be altered, terminated, suspended or refused, see the 1977 Measure s 13(2), Sch 2; 1993 Measure ss 8, 13; Church of England (Miscellaneous Provisions) Measure 2000 s 9. Regulations approved by the general Synod under the Clergy Pensions (Amendment) Measure 1972 s 6 (see PARA 738) may make necessary amendments to the 1977 Measure Sch 2: s 13(3); 1993 Measure s 8.

The provisions of what is now the Pastoral Measure 1983 Sch 4 para 13 do not limit an incumbent's right to compensation only until he reaches retiring age: *Re Flenley* [1981] Fam 64.

5 Ie in accordance with the 1977 Measure s 9(2).

6 As a consequence of receiving a notification from the bishop under *ibid* s 11(2)(a) (see PARA 733F.2).

7 Ie under *ibid* s 11: see PARA 733F.2.

8 For the purposes of the Church of England (Pensions) Measures 1961 to 1988 and any regulations approved by the General Synod under Clergy Pensions (Amendment) Measure 1972 s 6; Church of England (Pensions) Measure 1988 s 16: 1977 Measure s 14(1); Church of England (Pensions) Measure 1988 Sch 2 para 22.

9 1977 Measure s 14(1). Section 14(1) does not apply to an incumbent who on the relevant date has attained retiring age within the meaning of the Measures and regulations referred to above: s 14(2).

10 *Ibid* s 14(1); 1993 Measure s 14, Sch 3.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/733H. General supplemental provisions.

733H. General supplemental provisions.

The Diocesan Board of Finance is under a duty to pay certain expenses incurred in connection with any inquiry conducted under the preceding provisions¹.

If the bishop of a diocese is absent abroad, or incapacitated, or there is a vacancy in the see, provision is made for his duties to be carried out by the archbishop of the province to which the diocese belongs or a person in episcopal orders appointed by the archbishop for that purpose².

The Vacation of Benefices Rule Committee has power to make rules for carrying into effect the provisions of the Measure³.

1 See Incumbents (Vacation of Benefices) Measure 1977 s 16; Incumbents (Vacation of Benefices) (Amendment) Measure 1993 s 14, Sch 3.

2 1977 Measure s 17.

3 See *ibid* s 18; 1993 Measure s 9; Church of England (Miscellaneous Provisions) Measure 1995 s 14 and the Incumbents (Vacation of Benefices) Rules 1994, SI 1994/703. Functions of the Standing Committee under the 1977 Measure s 18 are transferred to the Appointments Committee or the Business Committee (as to which see PARAS 383A, 383B): Church of England (Transfer of Functions) Order 1998, SI 1998/1715.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/734. Constitution and procedure of ministerial committee.

734. Constitution and procedure of ministerial committee.

The ministerial committee of a diocese consists of twelve clergymen (not being archdeacons) who are elected by the clergymen beneficed, or licensed under seal to officiate, in the diocese from among themselves¹. Elections are held triennially according to the principles of proportional representation, under rules approved by the archbishop of the province². The candidates obtaining the six highest places are ordinary members of the committee, the next six being reserve members, who may be nominated to take the place of an ordinary member who vacates his office or is unable or unwilling to act in any particular case³. Everything which the committee is empowered to do is to be done by the six ordinary members or such reserve members as may be nominated⁴ and five of these members are a quorum⁵. Except as otherwise provided⁶ every question must be decided by a majority of votes of those present, the chairman, who is elected by the members of the committee, having a casting vote⁷. All proceedings at any meeting of the committee must be held in private⁸, and the committee has no power to administer oaths or compel the production of documents or attendance of witnesses.

1 Incumbents (Disability) Measure 1945, s 2, Sch. 1, Part I para 1 (1).

2 Ibid Sch. 1, Part I para 1 (2) (b), (5). See also Sch. 1, Part I para 1 (3), (4), (6), (8), (9). Rules approved by the Archbishops of Canterbury and York came into force on 1st January 1948 and copies are obtainable from the Church Information Office of the General Synod. The bishop has powers to give directions for carrying out the provisions of the Incumbents (Disability) Measure 1945, Sch. 1, Part III.

3 Ibid Sch. 1, Part I paras 1 (7), 2, 7.

4 Ibid Sch. 1, Part I para 2; see further Sch. 1, Part I paras 4 (office retained until next ensuing election); 5 (disqualification of a member the subject of inquiry); 6 (vacation on disqualification).

5 Ibid Sch. 1, Part II para 3.

6 See PARA 735 post.

7 Incumbents (Disability) Measure 1945, Sch. 1, Part II paras 1, 2.

8 Ibid Sch. 1, Part II para 4.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/735. Proceedings of ministerial committee.

735. Proceedings of ministerial committee.

When instructed¹ the committee must consider the questions put to it by the bishop and invite the incumbent concerned² and the bishop's representative³, if any, to confer with it either together or separately⁴. At any time before reaching a conclusion the committee may request the bishop or his representative to make further inquiry into any matter and to communicate the results of that inquiry to it⁵.

After the conference with the bishop's representative and the incumbent the committee must make a written report to the bishop answering the bishop's questions and send a copy to the incumbent⁶. The committee may not report that the incumbent is unable to discharge his duties adequately unless at least four members have voted in favour of such a report; nor may it recommend that the incumbent shall resign his benefice unless at least five members signify, in writing, their assent to such a report⁷.

There is no provision for an appeal against the report.

1 For the instructions referred to, see PARA 733 ante.

2 At any meeting to which the incumbent concerned is invited he may, if he so desires, be assisted or in his absence represented by a friend or adviser: Incumbents (Disability) Measure 1945, s 4 (2).

3 See PARA 733 ante.

4 Incumbents (Disability) Measure 1945, s 4 (1).

5 Ibid s 4 (3).

6 Ibid s 4 (1), (4). As to the sending of documents to an incumbent, see PARA 733 note 8 ante.

7 Ibid s 4 (1) proviso.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/736. Bishop's powers to provide assistance.

736. Bishop's powers to provide assistance.

Where the ministerial committee reports that through disability an incumbent is unable adequately to discharge the duties of his benefice without assistance and recommends that he be given assistance in discharging the duties the bishop may make such temporary provision for their discharge as he thinks fit¹. In particular he may, with the incumbent's consent², appoint and license one or more assistant curates³ and direct that certain duties be discharged by those curates instead of by the incumbent⁴, or he may give the incumbent temporary leave of absence for a period of up to two years and make provision for the discharge of his duties during his absence⁵. The appointment of a curate under the foregoing provisions may be determined by the bishop after such notice as is specified in the licence granted to the curate⁶. A record of every exercise of these powers must be filed in the diocesan registry⁷.

The stipend assigned to a curate appointed by the bishop under these powers must be specified in his licence⁸, and notwithstanding anything contained in other statutory provisions⁹ he is to receive such stipend as is assigned to him by the bishop, with the concurrence of the ministerial committee, out of the income of the benefice¹⁰. Before concurring in the amount to be paid the ministerial committee must have regard to any representation made by the incumbent as to his financial circumstances¹¹. Where the bishop makes temporary provision for the discharge of the duties he may provide for payment at the rate for temporary duty customarily paid in his diocese¹².

1 Incumbents (Disability) Measure 1945, s 5 (1).

2 If he refuses his consent he may avoid the benefice: see PARA 737 post.

3 Incumbents (Disability) Measure 1945, s 5 (1) (i). Annual fees payable to bishop's legal secretaries and diocesan registrars include payment for work done by them in connection with these matters: Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, App. I (ii), made under the Ecclesiastical Fees Measure 1962, s 1.

4 Incumbents (Disability) Measure 1945, s 5 (1) (ii).

5 Ibid s 5 (1) (iii).

6 Ibid s 5 (2).

7 Ibid s 5 (3).

8 Ibid ss 5 (1) (i), 10 (2).

9 In certain provisions of the Benefices (Ecclesiastical Duties) Measure 1926: see PARA 712 ante.

10 Incumbents (Disability) Measure 1945, s 10 (1). In the case of benefices where any part of the income is received from or paid through the Church Commissioners the bishop may by notice in writing authorise them to make payments to the curate instead of to the incumbent: s 12 (1). The notice may be given at any time after the date on which the bishop has made temporary provision for the discharge of the duties of the benefice, and further notices varying or revoking the original notice may be given, but no notice affects the payment of income next due unless the notice is received by the commissioners at least fourteen days before that payment becomes due: s 12 (2). Receipt of notice by the commissioners is sufficient authority to pay the income as directed and the receipt of the person appointed to receive the income is a valid discharge: s 12 (3). Notices must be in the form prepared for the purpose by the commissioners and when giving notice the bishop must send a copy to the incumbent concerned: s 12 (4).

11 Ibid s 10 (1) proviso.

12 Ibid s 11. The payments may be made out of the income of the benefice or otherwise: s 11.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(v) Disability of Mind or Body/737. Bishop's power to declare benefice vacant.

737. Bishop's power to declare benefice vacant.

The bishop may within six months of the receipt of the ministerial committee's report execute a declaration of avoidance of the benefice if either (1) the committee recommends that the incumbent should resign his benefice, or (2) the incumbent has failed to consent to the appointment of an assistant curate within fourteen days of a request by the bishop that he should do so¹.

The declaration of avoidance must specify a date from which the benefice is declared to be void, not being less than three or more than six months from the date of the declaration².

Copies of the declaration are to be sent to the patron of the benefice, the incumbent, the Church of England Pensions Board and to the registry of the diocese for filing³.

1 Incumbents (Disability) Measure 1945, s 6 (1). Annual fees payable to bishops' legal secretaries and diocesan registrars include payment for work done by them in connection inter alia with these matters: Legal Officers Fees Order 1974, S.I. 1974 No. 1837, Schedule, App. I (ii), made under the Ecclesiastical Fees Measure 1962, s 1.

2 Incumbents (Disability) Measure 1945, s 6 (1). A statutory form for the declaration of the avoidance is given: s 6 (2), Sch. 2. As to the pension payable as from the date of avoidance, see PARAS 739, 744 post.

3 Ibid s 6 (3). As to documents sent to an incumbent, see PARA 733 note 8 ante.

UPDATE

733-737 Disability of Mind or Body

Repealed and replaced by Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/A. SCOPE OF CLERGY PENSIONS/738. Evolution of clergy pensions schemes.

(vi) Clergy Pensions

A. SCOPE OF CLERGY PENSIONS

738. Evolution of clergy pensions schemes.

Before 1871 clerks in holy orders had no pensions as of right, but thereafter an incumbent of seven years' standing who retired for incapacity might have a pension assigned out of the revenues of the benefice¹. Similar provision was made in 1872 for deans and canons². Subsequently small annuities became payable by the Clergy Pensions Institution by way of an assurance scheme, and in 1927 a comprehensive and largely contributory clergy pension scheme came into operation, administered by the Church of England Pensions Board³. Some years later a pensions scheme was established for widows and other dependants⁴, and in 1946 a supplementary pensions scheme was introduced⁵. The existing schemes were consolidated in 1948⁶, and in 1954 clergymen's own pensions became non-contributory, these pensions being administered by the Church Commissioners⁷. Pensions for diocesan and suffragan bishops were separately provided for⁸. The schemes were further consolidated in 1961⁹, and were amended in 1972¹⁰ and 1975¹¹. The General Synod may, by regulations approved by it, make further provision with respect to pensions of the clergy and their widows and dependants and for other matters incidental and supplementary¹².

1 See the Incumbents Resignation Act 1871 (repealed).

2 See the Deans and Canons Resignation Act 1872 (repealed).

3 See the Clergy Pensions Measure 1926 (repealed). Although it catered only for clergymen not over the age of fifty-five (ss. 1, 2), a system of pensions for older clergymen was subsequently introduced: see the Clergy Pensions (Older Incumbents) Measure 1930 (repealed).

4 See the Clergy Pensions (Widows and Dependants) Measure 1936 (repealed).

5 See the Clergy Pensions (Supplementary Pensions) Measure 1946 (repealed).

6 See the Clergy Pensions Measure 1948 (repealed).

7 See the Clergy Pensions Measure 1954 (repealed).

8 See the Episcopal Pensions Measure 1945 (repealed).

9 See the Clergy Pensions Measure 1961.

10 See the Clergy Pensions (Amendment) Measure 1972.

11 See the Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, made under the power cited in note 12 *infra*.

12 Clergy Pensions (Amendment) Measure 1972, s 6.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

738 Evolution of clergy pensions schemes

TEXT--As to pensions for deaconesses and lay workers, see Deaconesses and Lay Workers (Pensions) Measure 1980 (see PARA 739A).

As from 1 January 1998, there are established two clergy pensions schemes: see PARA 738A.

TEXT AND NOTES 10-12--The Church of England Pensions Regulations 1988, SI 1988/2256 make provisions necessary to enable the clergy pensions scheme to be contracted-out under Social Security Pensions Act 1975 Pt III (ss 26-52). Schemes further amended by Clergy Pensions (Amendment) Measure 1982.

NOTE 12--The power of the General Synod to make further regulations has been extended: Clergy Pensions (Amendment) Measure 1972 s 6 (amended by the Church of England (Pensions) Measure 1988 s 16; the Church of England (Miscellaneous Provisions) Measure 1995 s 14; the Pensions Measure 1997 s 10, Sch 1 para 17; and the Civil Partnership (Judicial Pensions and Church Pensions, etc) Order 2005, SI 2005/3325.

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738A. The past service scheme and the funded scheme.

1. Establishment of two schemes

There are established two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers, surviving civil partners and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'); and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme')¹.

The past service scheme comprises provisions contained in the Church of England Pensions Regulations 1988, SI 1988/2256, the Clergy Pensions (Lump Sum Payments) Rules 1988 and any further regulations or rules relating to the past service scheme, whether made before or after 21 March 1997 (the date on which the Measure was passed)².

'Past service' means any period of pensionable service before the appointed day (1 January 1998), and 'future service' means any period of pensionable service on or after the appointed day³.

The Church Commissioners continue to be liable to meet the cost of pensions and lump sum payments in respect of past service, and lump sum payment arising from death before the appointed day⁴. The Pensions Board is liable for payments in respect of service or death after that date⁵.

1 Pensions Measure 1997 s 1(1) (amended by SI 2005/3325). The Measure came into force on 1 January 1998 in accordance with an order made jointly by the Archbishops of Canterbury and York on 28 November 1997.

2 1997 Measure s 1(2).

3 Ibid s 9(1).

4 See PARA 739 TEXT AND NOTES.

5 See PARA 738A.2.

2. The funded scheme

The funded scheme must be established by deed by the Pensions Board¹. It must provide for the making of rules as to the nature and amount of the pensions and lump sum payments payable under the funded scheme and for the making of amending rules².

The scheme must provide for the constitution and maintenance of the Church of England Pensions Fund by the Board³.

Each responsible body must make contributions for the purposes of the funded scheme by paying to the Board in respect of each scheme member for whom the body is responsible such sums as the Board may determine⁴ in accordance with the regulations⁵. The Church Commissioners may, within such period as they may determine not exceeding the period of seven years following 1 January 1998, make such grants to a responsible body as they may

think expedient for the purpose of assisting that body in meeting the cost of any contribution due to be paid under the provisions described above⁶.

The responsible bodies are: (1) in the case of a diocesan bishop or a dean, provost or residentiary canon in receipt of a stipend or other emoluments under the Cathedrals Measure 1963 s 28, the Church Commissioners; (2) in the case of a scheme member in receipt of a stipend paid from a diocesan stipends fund income account kept by the commissioners under the Diocesan Stipends Fund Measure 1953 s 1, the Diocesan Board of Finance of the diocese concerned; (3) in the case of a scheme member in receipt of periodical payments under the Incumbents (Vacation of Benefices) Measure 1977 s 13, Sch 2 para 2, or compensation under the Pastoral Measure 1983 s 26, Sch 4, the Diocesan Board of Finance of the diocese concerned; (4) in the case of a scheme member in receipt of a stipend paid wholly from caputular funds, the caputular body of the cathedral church concerned; (5) in the case of a scheme member in receipt of periodical payments under the Ordination of Women (Financial Provisions) Measure 1993 s 1(1)(b), the commissioners; (6) in the case of a scheme member who is (a) a clerk in Holy Orders employed by a World Mission Agency of the Church of England which is at the passing of this Measure an associate or full member of the Partnership for World Mission; or (b) a clerk in Holy Orders employed by the Church Pastoral Aid Society, the commissioners; (7) in the case of a scheme member employed in pensionable service otherwise than as mentioned in (5) above, the employer; and (8) in the case of any other person who is a scheme member performing pensionable service, the body primarily concerned for the time being in promoting that person's membership of the funded scheme⁷.

1 Pensions Measure 1997 s 1(3). See sub-para 1 NOTE 1. As to the Pensions Board see PARA 751.

2 Ibid s 2(1). Rules must be approved by the General Synod: see s 2(2), (3).

3 Ibid s 3(1). The Board must pay into the fund all contributions received by it under s 4, and all other moneys received for the purposes of the scheme: s 3(1). All payments in respect of pensions and lump sum payments arising or to be provided under the scheme are made by the Board out of the fund: s 3(2).

4 Before making such a determination the Board must obtain the advice of an actuary, and the determination must be consistent with that advice: ibid s 4(2). 'Actuary' means a Fellow of the Institute of Actuaries or the Faculty of Actuaries in Scotland, not being a Church Commissioner or a member of the Board or a member of the staff of the commissioners or the Board, and includes a firm of actuaries: s 9(1). Before making a determination as to contributions, the Board must consult the archbishops and the responsible bodies: Church of England Pensions Regulations 1997, SI 1997/1929, reg 9(1).

5 Pensions Measure 1997 s 4(1). The payments must be made at such times as may be prescribed by regulations: s 4(3). The time so prescribed is the end of each calendar month: Church of England Pensions Regulations 1997 reg 10. If any payment is not made, the board may add interest when determining any subsequent payment: reg 9(2).

6 Pensions Measure 1997 s 6. The Commissioners may, for a limited period, apply capital funds for the purposes of making such a grant, or for meeting the costs of certain pensions or lump sums payable under the past service scheme or the Church Commissioners Superannuation Scheme: s 7 (substituted by the Church of England (Pensions) Measure 2003 s 5 and amended by the Church of England Pensions (Amendment) Measure 2009 s 1).

7 Pensions Measure 1997 s 4(4) (amended by the Church of England (Pensions) Measure 2003 s 4). Head (2) is modified in its application to the Isle of Man, referring to a diocesan stipends account kept by the Sodor and Man Diocesan Board of Finance, in which case the responsible body is that board: Pensions Measure 1997 s 4(5).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England

(Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

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739. Entitlement to pensions.

Any clerk in holy orders¹ retiring on or after 1st April 1961² after performing a qualifying period of pensionable service³ is entitled to receive a pension⁴ from the Church Commissioners⁵.

1 As to the geographical limitations, see PARA 742 note 6 post.

2 Any pension payable under any Act or Measure before this date is unaffected by the Clergy Pensions Measures 1961 to 1972, subject to the provisions of those Measures, and is payable according to the repealed provisions of the Clergy Pensions Measure 1948 (as amended): Clergy Pensions Measure 1961, s 48 (4). Provision is made for the return of contributions paid under the Clergy Pensions Measure 1948 and the Episcopal Pensions Measure 1945 (repealed), if the contributor dies before entering upon a pension under the Clergy Pensions Measure 1961: ss 7, 8, 46 (1); Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 7.

3 For the meaning of 'qualifying period of pensionable service', see PARA 742 post.

4 The rate at which the pension is payable depends on whether retirement is before or after the retiring age or is due to incapacity: Clergy Pensions Measure 1961, s 1 (1): see PARAS 743, 744 post.

5 Ibid s 1. Payment is made out of the commissioners' general fund (as to which see PARA 376 ante, 1234 post): s 17 (1).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

739 Entitlement to pensions

TEXT AND NOTES--The 1961 Measure Pts III, IV and the 1988 Regulations, SI 1988/2256, Pt II apply to a woman who becomes a clerk in holy orders by virtue of being ordained to the office of deacon and to her husband or widower, as they apply to a male clerk in holy orders: Deacons (Ordination of Women) Measure 1986 s 3.

The Church Commissioners continue to be liable to meet the cost of any pension arising from the retirement or death of a scheme member in so far as it is attributable to past service (ie service before 1 January 1998), any lump sum payment arising from the retirement of a scheme member in so far as it is so attributable to past service, and any lump sum payment arising from the death of a scheme member occurring before the appointed day (1 January 1998): see Pensions Measure 1997 s 5(1), (2). The Commissioners are not, however, liable for payments in respect of future service or death of a scheme member occurring on or after 1 January 1998: s 5(3). As to the establishment of a funded scheme in respect of future service see PARA 738A.

NOTE 2--1975 Regulations replaced: 1988 Regulations, SI 1988/2256. 1961 and 1972 Measures replaced in part by the 1988 Regulations.

NOTE 4--Where employment becomes contracted-out by reference to the clergy pensions scheme (in accordance with Social Security Pensions Act 1975 Pt III (ss 26-52)), the rate of pension is governed by SI 1988/2256.

NOTE 5--Replaced. The Commissioners may, within such period as they may determine not exceeding the period of seven years following 1 January 1998, apply capital funds for the purpose of meeting the cost of payments in respect of past service: Pensions Measure 1997 s 7 (see PARA 738A.2). Subject to that, all payments to be made by the commissioners to the Board, required by the Board for payments to be made by it under the past service scheme (see PARA 738A.1), must be made out of the commissioners' general fund: 1961 Measure s 17(1), as substituted by the Pensions Measure 1997 s 10, Sch 1 para 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/A. SCOPE OF CLERGY PENSIONS/739A. Entitlement to pensions: deaconesses and lay workers.

739A. Entitlement to pensions: deaconesses and lay workers.

The Church Commissioners have power to make payments out of their general fund¹ to the Church of England Pensions Board for the purposes of providing or augmenting (i) pensions for deaconesses² and lay workers³ and their dependants⁴, widows and widowers or surviving civil partners, being pensions paid or payable under the past service scheme, or in respect of service which ended before 1 December 1988; and (ii) any lump sums paid or payable under that scheme to deaconesses and lay workers on their retirement from service⁵. Any such payment may be made on such terms and subject to such conditions, if any, as may be agreed between the Church Commissioners and the Board⁶.

Any sums paid to the Board in exercise of this power must be applied by the Board in such manner as it, in consultation with the Church Commissioners, thinks fit to implement the above purposes⁷. In addition, it may pay part or all of such sum into the Church Workers Pension Fund⁸ or any other fund established for the above purposes or any of them⁹.

1 See PARAS 376, 1234.

2 See PARA 759 et seq.

3 A lay worker means a person who has been admitted by a bishop as a lay worker of the Church of England and who has been authorised by a bishop, whether by licence or otherwise, to serve as such a worker in a diocese: Deaconesses and Lay Workers (Pensions) Measure 1980 s 1(3). See further PARA 766 et seq. A 'licensed lay worker' means a person who has been admitted by a bishop as a lay worker, and authorised by a bishop by licence to serve as such a worker. It includes lay workers admitted and authorised other than by licence, being members of the Church Workers Pension Fund on 1 December 1988: Clergy Pensions Measure 1961 s 46(1); Church of England (Pensions) Measure 1988 Sch 2 para 20(b).

4 A dependant, in relation to a deaconess or lay worker, means such person as the Board may consider to have been wholly or partly dependent financially on the deaconess or lay worker at the time of his or her death: 1980 Measure s 1(3).

5 Ibid s 1(1), as amended by Pensions Measure 1997 s 10, Sch 1 para 18; and SI 2005/3325.

6 1980 Measure s 1(1).

7 Ibid s 1(2).

8 See PARA 758.

9 1980 Measure s 1(2).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England

Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/A. SCOPE OF CLERGY PENSIONS/740. Excluded persons.

740. Excluded persons.

Any clergyman who was excluded from the provisions of the Clergy Pensions Measure 1948 is excluded from the scheme¹. However, the Church of England Pensions Board may agree at any time to terminate the exclusion on such conditions as it thinks fit².

¹ Clergy Pensions Measure 1961, s 37 (4).

² Ibid s 37 (5).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/741. Conditions of entitlement generally.

B. ENTITLEMENT TO CLERGY PENSIONS

741. Conditions of entitlement generally.

Clergy who have served for a qualifying period of service¹ are entitled to a pension on retirement at the retiring age² or over, or upon retirement due to incapacity³, the rate of pension depending on age at retirement and the length of pensionable service⁴.

The Church of England Pensions Board may enter into an agreement with any clergyman under which any service⁵ performed by him as a clergyman may be treated as pensionable service and any such agreement may, if the board thinks fit, require the clergyman concerned to pay to the Church commissioners such sum or sums of money as the board may determine, having regard to the nature of the service performed and the cost of treating that service as pensionable service⁶. The board may also enter into reciprocal arrangements with any church or organised body of clergy recognised by the Archbishop of Canterbury for this purpose⁷ or with certain other pension authorities⁸.

Application for a pension to which a clergyman is entitled must be made in such manner as the board may determine, and where a clergyman is incapacitated from making such an application himself the board may authorise some other person to make an application on his behalf⁹.

1 See PARA 742 post. As to a clergyman who is deposed or executes a deed of relinquishment, see PARA 746 post.

2 For the meaning of 'retiring age', see PARA 743 note 2 post.

3 Clergy Pensions Measure 1961, s 1 (1); Clergy Pensions (Amendment) Rules 1975, S.I. 1975 No. 136, reg. 9 (1) (a).

4 See PARA 742 post.

5 Ie whether performed within or outside the area to which the Measure applies: Clergy Pensions Measure 1961, ss 1 (3), 49. For this area, see PARA 742 note 6 post.

6 Ibid s 1 (3).

7 See ibid s 41, and PARA 752 post.

8 See ibid s 42, and PARA 752 post.

9 Ibid s 6; Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 6.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions

(Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

741 Conditions of entitlement generally

TEXT--Where the service of a clerk becomes contracted-out employment by reference to the clergy pensions scheme (in accordance with Social Security Pensions Act 1975 Pt III (ss 26-52)), the rate of entitlement to a pension is governed by the 1988 Regulations, SI 1988/2256.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/742. Qualifying period of pensionable service.

742. Qualifying period of pensionable service.

Before becoming entitled to a pension, a clergyman must have completed a 'qualifying period of pensionable service'¹. This means a period of pensionable service of not less than five years or a succession of periods of such service, either with or without intervals², amounting in the aggregate to not less than five years³; although in relation to any individual clergyman, the Church of England Pensions Board, with the concurrence of the Church Commissioners, may in exceptional circumstances substitute such shorter period as it may determine⁴. To be 'pensionable service', the service must be whole time ecclesiastical service⁵ within the area to which the Clergy Pensions Measures 1961 to 1972 apply⁶ in connection with a diocese, cathedral or parish, or in connection with the collegiate churches of Westminster or Windsor⁷; or any service performed as a clergyman which is the subject of an agreement with the board⁸. Any period of service in respect of which a clergyman is a member of any pension or superannuation scheme other than that established by the Clergy Pensions Measure 1961 or one approved by the board or the commissioners for this purpose is not treated as pensionable service⁹, although if he ceases to be a member of that other scheme before being entitled to a pension under it the board may enter into an agreement with him under which that period of service may be treated as pensionable service¹⁰.

1 Clergy Pensions Measure 1961, s 1 (1).

2 Any interval not exceeding three months, or such longer interval as the Church of England Pensions Board may in exceptional circumstances allow, between two periods of pensionable service is ignored for purposes of determining whether the clergyman has performed a qualifying period or of determining the length of such period performed by him: *ibid* s 1 (5); Clergy Pensions (Amendment) Measure 1972, s 5 (1).

3 Clergy Pensions Measure 1961, s 1 (2); Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 2 (1). In the case of a person retiring or dying before 6th April 1975 this has effect as if 'ten years' were substituted in each place for 'five years': reg. 2 (2). Subject to the Clergy Pensions Measure 1961, s 1 (5) (see note 2 *supra*), where any period of service begins otherwise than on the first day of any month the period of service is treated as beginning on the first day of the following month; and where any such period ends otherwise than on the last day of the month, it is treated as ending on the last day of the immediately preceding month: s 1 (6).

4 *Ibid* s 1 (2) proviso; Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 2 (1).

5 'Ecclesiastical service' means service rendered under the direction of a diocesan bishop or carried on in furtherance of the spiritual or administrative work of the Church of England and recognised as such by a diocesan bishop: Clergy Pensions Measure 1961, s 46 (1).

6 The Clergy Pensions Measures 1961 to 1972 extend to the whole of the Province of Canterbury excluding the Channel Islands (although the Measure may be applied to them), the whole of the Province of York, including the Isle of Man, and the collegiate churches of Westminster and Windsor (which, as royal peculiars, are not within any province): Clergy Pensions Measure 1961, s 49. As to pensions schemes applying in the Channel Islands, see the Clergy Pensions (Channel Islands) Order 1963, S.I. 1963 No. 785; Clergy Pensions (Channel Islands) Order 1968, S.I. 1968 No. 1698 (which apply with modifications the Clergy Pensions Measure 1961 and the Clergy Pensions (Amendment) Measure 1967), made under the Clergy Pensions Measure 1961, s 49 proviso.

7 *Ibid* s 1 (2) (a).

8 *Ibid* s 1 (2) (b), (3). As to such agreements, see PARA 741 *ante*.

9 Ibid s 1 (4); Social Security Act 1973, ss 100, 101, Sch. 28, Part I; Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 4.

10 Clergy Pensions Measure 1961, s 1 (4) proviso. The agreement may require the clergyman to pay the commissioners such sum or sums of money as the board may determine: s 1 (4) proviso.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

742 Qualifying period of pensionable service

TEXT AND NOTES--See generally Church of England Pensions Regulations 1988, SI 1988/2256, reg 4 (as amended by Pensions Measure 1997).

TEXT AND NOTE 1--But see Church of England Pensions Regulations 1988, SI 1988/2256, regs 19-22 (reg 19 as amended by SI 2005/3325); where the service of a clerk becomes contracted-out employment by reference to the clergy pensions scheme (in accordance with Social Security Pensions Act 1975 Pt III (ss 26-52)) the clerk or his widow becomes entitled to a guaranteed minimum pension, even though the qualifying period has not been performed.

NOTE 6--Also applying to the Channel Islands, Clergy Pensions (Amendment) Measure 1969 and 1972 (applied by Clergy Pensions (Channel Islands) Order 1978, SI 1978/784).

TEXT AND NOTE 7--For these purposes, the diocese in Europe (see PARAS 316, 455) is a diocese in the province of Canterbury; and a reference to a parish includes a reference to a chaplaincy in the diocese in Europe: Diocese in Europe Measure 1980 s 5(1) (amended by Church of England (Pensions) Measure 1988 s 18(1), Sch 2 Part II para 24(a); Church of England Pensions (Amendment) Measure 2009 s 2(3)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/743. Retirement pensions.

743. Retirement pensions.

The rate of pension of a clergyman¹ retiring at or above the retiring age², having performed a qualifying period of pensionable service³ of forty years or more⁴, depends on the highest rated office held at any time by the clergyman within the area to which the Clergy Pensions Measures 1961 to 1972 apply⁵. Where the qualifying period performed by such a clergyman is less than forty years, the rate of pension is calculated with reference to the number of years served within the area to which the Measures apply and the highest rated office held there at any time⁶.

The rates of pension may be increased at the direction of the Church Commissioners⁷.

1 A clergyman who, before attaining the retiring age, ceases to perform pensionable service otherwise than on the ground that he has become incapable of performing the duties of his office (see PARA 744 post), and who is not performing pensionable service on the date on which he attains that age, is deemed for the purpose of the Clergy Pensions Measures 1961 to 1972, any rules made thereunder and the Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, to have retired on that date: reg. 3.

2 'Retiring age' means the age of seventy years or such other age as the General Synod may by resolution from time to time determine: Clergy Pensions Measure 1961, s 46 (1); Synodical Government Measure 1969, s 2 (2).

3 For the meaning of 'qualified period of pensionable service', see PARA 742 ante.

4 For all clergy retiring or dying on or after 9th August 1972 who have performed a qualifying period of pensionable service of not less than thirty years, that qualifying period is deemed to be increased as follows: (1) in the case of a qualifying period of not less than thirty-seven years, by three years; (2) in the case of a qualifying period of less than thirty-seven years, but not less than thirty-three and one-half years, by two years; and (3) in the case of a qualifying period of less than thirty-three and one-half years, but not less than thirty years, by one year: Clergy Pensions (Amendment) Measure 1972, s 1 (1), (3).

5 Clergy Pensions Measure 1961, s 1 (1), Sch. 1, Part I para 1. The rate for each office is as follows: Archbishops of Canterbury and York, £2,000; Bishops of London, Durham and Winchester, £1,750; other diocesan bishops, £1,250; suffragan bishops, £900; deans and provosts of cathedral churches, and Deans of Westminster or Windsor, £700; archdeacons, £600; other clergymen, £400: Sch. 1, Part I para 1, Table. As to the area to which the Measures extend, see PARA 742 note 6 ante.

6 Ibid Sch. 1, Part I para 2.

7 See ibid s 2 (1); Clergy Pensions (Amendment) Measure 1972, s 2 (1). As to augmented and supplementary pensions, see also PARA 749 post.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI

2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

743 Retirement pensions

TEXT--Where the service of a clerk becomes contracted-out employment by reference to the clergy pensions scheme (in accordance with Social Security Pensions Act 1975 Pt III (ss 26-52)), the rate of pension is governed by the Church of England Pensions Regulations 1988, SI 1988/2256.

The retiring age is now 65 years, the qualifying period of 40 years now 37 years: SI 1988/2256.

As to the retiring age of clergy following the failure to publish relevant rules and regulations, see *Gatherer v Gomez* [1992] 1 WLR 727, PC.

The retiring age of women is 60 years or such other age as the General Synod may by resolution from time to time determine: 1961 Measure s 46(1); Deacons (Ordination of Women) Measure 1986 Schedule para 4; see also s 3(2). As to the ordination of women to the office of deacon see s 1, PARA 657A.

NOTE 1--1975 Regulations reg 3 replaced, see now Clergy Pensions (Amendment) Measure 1967 s 3(3); Clergy Pensions (Amendment) Regulations 1988, SI 1988/2239.

NOTE 4--Clergy Pensions (Amendment) Measure 1972 s 1 revoked in relation to clerks who retire or die after 6 April 1978: SI 1977/1146.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/744. Retirement on ground of incapacity.

744. Retirement on ground of incapacity.

If a clergyman retires before attaining the retiring age¹ on the ground that he has become incapable through infirmity of performing the duties of his office, and he has performed a qualifying period of pensionable service², he is entitled to a pension if the Church of England Pensions Board is satisfied, after considering medical evidence and such other evidence as in its opinion is necessary, that he is so incapable and that the infirmity is likely to be permanent³. The board's decision is subject to the condition that further medical evidence may subsequently be required by the board from time to time as the board directs⁴. If the clergyman fails to comply with the condition or the board is satisfied, after considering further medical evidence, that he has become capable of performing pensionable service, it may suspend or reduce the pension as it sees fit⁵.

A clergyman who is dissatisfied with a decision of the board may appeal to two or more referees appointed by the board as suitable persons to consider that appeal; and their decision is final⁶.

The rate of pension is calculated with reference to the highest rated office held at any time by the clergyman within the area to which the Clergy Pensions Measures 1961 to 1972 apply, with a percentage reduction for each year by which the clergyman falls short of the retiring age⁷.

1 For the meaning of 'retiring age', see PARA 743 note 2 ante.

2 For the meaning of 'qualifying period of pensionable service', see PARA 742 ante. For a clergyman retiring on or after 9th August 1972 who has performed not less than thirty years pensionable service, the qualifying period is deemed to be increased: see the Clergy Pensions (Amendment) Measure 1972, s 1, and PARA 743 note 4 ante.

3 Clergy Pensions Measure 1961, s 3 (1).

4 Clergy Pensions (Amendment) Measure 1972, s 3 (1).

5 Ibid s 3 (2). If the board is subsequently satisfied after considering further medical evidence that the clergyman is incapable through infirmity of performing pensionable service, he is deemed to have retired again and the Clergy Pensions Measure 1961, s 4 (3) applies: Clergy Pensions (Amendment) Measure 1972, s 3 (2) proviso. As to an appeal from the board's decision, see s 3 (3); Clergy Pensions Measure 1961, s 3 (2).

6 Ibid s 3 (2).

7 Ibid s 1 (1), Sch. 1, Part II. As to the area to which the Measures extend, see PARA 742 note 6 ante.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s

10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

744 Retirement on ground of incapacity

TEXT AND NOTES--See Church of England Pensions Regulations 1988, SI 1988/2256, reg 7 relating to commencement of such a pension.

TEXT AND NOTE 5--A pension may also be reduced or suspended where a clergyman, while incapable of performing pensionable service, is or is capable of being engaged in other remunerated employment: see 1988 Regulations reg 7; SI 1992/1748.

TEXT AND NOTE 7--Revoked in relation to percentage deduction: SI 1985/2081.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/745. Conditions for receipt of pensions.

745. Conditions for receipt of pensions.

If a clergyman in receipt of a pension under the Clergy Pensions Measure 1961, or any Measure repealed by it¹, accepts office as a diocesan bishop, suffragan bishop, archdeacon, dean, provost, residentiary canon or incumbent of a benefice², the Church of England Pensions Board must suspend his pension as long as he holds that office³. If a clergyman in receipt of such a pension but who has not attained the age of seventy performs, after his retirement, service (other than that specified above) which is pensionable service, the board may suspend or reduce the pension as it thinks fit⁴. Where the pension of a clergyman who has retired after performing less than forty years' pensionable service is so suspended or reduced, he must on his second retirement be paid at such rate as the board thinks fit, having regard to the additional period of pensionable service performed, not being a rate lower than that received by him before that suspension or reduction⁵. The rate of pension payable to any clergyman under the Clergy Pensions Measures 1961 to 1972 may not be increased by reason of the performance by him of pensionable service after retirement unless his pension has been suspended or reduced⁶.

1 See PARA 738 ante.

2 See PARA 742 text and note 5 ante.

3 Clergy Pensions Measure 1961, s 4 (1).

4 Ibid s 4 (2); Clergy Pensions (Amendment) Measure 1972, s 5 (2).

5 Clergy Pensions Measure 1961, s 4 (3).

6 Ibid s 4 (4).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

745 Conditions for receipt of pensions

TEXT AND NOTE 4--For 'the age of seventy' read 'an age five years above the retiring age': Church of England Pensions Regulations 1988, SI 1988/2256, reg 9; SI 1992/1748.

TEXT AND NOTE 5--The qualifying period is now 37 years: SI 1988/2256 reg 9.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/746. Deposition or relinquishment.

746. Deposition or relinquishment.

A clergyman who is deposed from holy orders or who executes a deed of relinquishment¹ is nevertheless still a clerk in holy orders for the purposes of the clergy pensions legislation². If at the date on which a clergyman is so deposed or on which a deed of relinquishment executed by him is recorded in the diocesan registry³ the clergyman has attained the retiring age⁴, he is deemed to have retired on that date and if at that date he has not attained the retiring age he is deemed to retire on the date on which he attains that age⁵.

- 1 Ie under the Clerical Disabilities Act 1870: see PARA 686 ante.
- 2 Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 5 (2).
- 3 Ie under the Clerical Disabilities Act 1870, s 4 or s 5: see PARA 686 ante.
- 4 For the meaning of 'retiring age', see PARA 743 note 2 ante.
- 5 Clergy Pensions (Amendment) Regulations 1975, reg. 5 (3).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

746 Deposition or relinquishment

NOTES 2, 4, 5--1975 Regulations regs 3 and 5 replaced, now Clergy Pensions (Amendment) Measure 1967 s 3(4); Clergy Pensions (Amendment) Regulations 1988, SI 1988/2239.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/747. Payment and alienation of pensions.

747. Payment and alienation of pensions.

Pensions accrue from day to day and are payable (subject to any necessary apportionment) by equal quarterly instalments¹, except where the death of a pensioner occurs within twelve months of his entering upon his pension, in which case the full pension for one year, less any instalment received, must be paid to his personal representative².

Pensions may be resigned by instrument in writing, but are incapable of being assigned, charged or anticipated, and they do not pass to a trustee in bankruptcy³.

¹ Clergy Pensions Measure 1961, s 35 (1). As to pensions of widows and dependants, see PARA 754 et seq post.

² Ibid s 2 (4). In calculating the pension that would have been payable, any augmentation or supplementary pension is to be disregarded: s 2 (4). See also PARA 749 post.

³ Ibid s 35 (2); but see s 15 (2), and PARA 756 post. Special provisions apply to clergymen suffering from mental disorder: see s 36. As to the position where there are arrears of contributions, see s 35 (4). Power to commute widows' and dependants' pensions is conferred by s 16. A clergyman may commute part of his own pension: Clergy Pensions (Amendment) Measure 1967, s 2.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

747 Payment and alienation of pensions

NOTE 3--Clergy Pensions (Amendment) Measure 1967 s 2, revoked by Clergy Occupational Pensions Scheme Regulations 1977, with effect from 6 April, 1978. 1961 Measure ss 15, 16 repealed: 1988 Regulations, SI 1988/2256. The Church of England (Pensions) Measure 1988 s 15 provides for the liability of a clerk to pay voluntary contributions to cease.

1961 Measure s 35(4) does not apply to arrears of contributions when assessing benefits under the 1988 Measure ss 7-9. An actuary may take account of such arrears in assessing any benefits payable.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/748. Lump sum payments.

748. Lump sum payments.

Subject to and in accordance with rules made by the Church of England Pensions Board the Church Commissioners may make lump sum payments to clergymen entitled to pensions under the Clergy Pensions Measures 1961 to 1972¹ in addition to those pensions².

Under the present rules³ such lump sum payments are payable in respect of clergymen who retired or retire⁴ on or after 22nd March 1967⁵. The maximum sum payable is £1,000 or such greater sum as may be recommended by the board and approved by the commissioners⁶. The amount of the lump sum payable to a clergyman retiring on or after attaining the retiring age⁷, having performed a qualifying period of pensionable service⁸ entitling him to the maximum rate of pension⁹, is the maximum lump sum payment¹⁰. In any other case the amount of the lump sum payable is such as bears the same proportion to the maximum lump sum payment as the pension to which he is entitled on retirement¹¹ bears to the pension to which he would have been entitled if he had retired at the retiring age, after having performed such a qualifying period of pensionable service entitling him to the maximum rate of pension¹². Where a clergyman is paid a pension on a second retirement¹³ the commissioners may make him a lump sum payment equal to the difference between the payment which would have been made if the retirement had been his first retirement and any lump sum payment or payments which has or have already been made to him or which would have been made to him if his previous retirements had taken place on or after 22nd March 1967¹⁴.

By notice in writing signed by him and delivered to the board, a clergyman may renounce the whole or any part of the lump sum payable to him¹⁵.

1 See PARA 739 ante.

2 Clergy Pensions (Amendment) Measure 1967, s 3 (1). Rules may be made under s 3 (1): see note 3 infra.

3 Ie the Clergy Pensions (Lump Sum Payments) Rules 1967.

4 A clergyman who dies on or after attaining the retiring age without having notified the board of his retirement is deemed to have retired immediately before his death: *ibid* r 5.

5 *Ibid* r 3.

6 *Ibid* r 2 (a).

7 For the meaning of 'retiring age', see PARA 743 note 2 ante.

8 For the meaning of 'qualifying period of pensionable service', see PARA 742 ante.

9 As to the maximum rate, see PARA 743 ante.

10 Clergy Pensions (Lump Sum Payments) Rules 1967, r 4 (a).

11 As to the pensions payable on retirement, see PARA 743 ante.

12 Clergy Pensions (Lump Sum Payments) Rules 1967, r 4 (b).

13 See PARA 745 ante.

14 Clergy Pensions (Lump Sum Payments) Rules 1967, r 6.

15 *Ibid* r 7.

UPDATE**738-758 Clergy Pensions**

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

748 Lump sum payments

TEXT--As to lump sum payments to deaconesses and lay workers, see Deaconesses and Lay Workers (Pensions) Measure 1980 (see PARA 739A).

TEXT AND NOTE 2--Replaced. The Pensions Board may now make such payments to scheme members entitled to pensions under the past service scheme (as to which see PARA 738A.1): 1967 Measure s 3(1); Church of England (Pensions) Measure 1988 s 5; Pensions Measure 1997 s 10, Sch 1 para 14. As to the making of rules without debate in the General Synod see 1967 Measure s 3(2A); Church of England Pensions (Amendment) Regulations 1992, SI 1992/1748.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/749. Augmentation of pensions; supplementary pensions.

749. Augmentation of pensions; supplementary pensions.

The Church Commissioners may, at the request of the Church of England Pensions Board, authorise the board to augment the pension payable to an individual clergyman¹. The board may authorise the Church Commissioners to pay a supplementary pension to a clergyman in receipt of a pension under the Clergy Pensions Measures 1961 to 1972².

¹ Clergy Pensions Measure 1961, s 2 (2).

² Ibid s 2 (3); Clergy Pensions (Amendment) Measure 1972, s 2 (2), (3). The fact of commutation, if any, is not to be taken into account: Clergy Pensions (Amendment) Measure 1967, s 2 (3): see PARA 750 post.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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749 Augmentation of pensions; supplementary pensions

TEXT--As to augmentation of pensions of deaconesses and lay workers, see Deaconesses and Lay Workers (Pensions) Measure 1980 (para 739A).

NOTE 2--Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146, revokes Clergy Pensions (Amendment) Measure 1967 s 2, with effect from 6 April 1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/B. ENTITLEMENT TO CLERGY PENSIONS/750. Commutation of pensions.

750. Commutation of pensions.

A clergyman may, during the three months before he becomes entitled to a pension, apply¹ to commute such part of the pension, not exceeding one-fifth², as he may specify; and the Church of England Pensions Board may agree to the commutation of that part of the pension, or such smaller part as it thinks proper, for such capital sum as is calculated to be its actuarial equivalent³.

1 The application is to be made in such manner as the Church of England Pensions Board may determine: Clergy Pensions (Amendment) Measure 1967, s 2 (1).

2 The Church Commissioners may, at the board's request, fix a higher proportion and may vary the proportion so fixed, but not so as to be less than one-fifth or more than one-quarter: *ibid* s 2 (2).

3 *Ibid* s 2 (1). The clergyman is deemed to be receiving or to have received the pension that he would have received but for the commutation for the purposes of the Clergy Pensions Measure 1961, ss 2 (3), 10 (as to which see PARA 749 ante, 754 post): Clergy Pensions (Amendment) Measure 1967, s 2 (3).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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750 Commutation of pensions

TEXT AND NOTES--Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146, revokes Clergy Pensions (Amendment) Measure 1967 s 2, with effect from 6 April 1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/C. ADMINISTRATION/751. The Church of England Pensions Board.

C. ADMINISTRATION

751. The Church of England Pensions Board.

The pensions authority is a body corporate called the Church of England Pensions Board, with perpetual succession and a common seal¹.

The board consists of a chairman, nominated by the General Synod, and between twenty-one and twenty-three members². These members consist of (1) sixteen members elected by the General Synod, of whom eight must be ordinarily resident in the Province of Canterbury and eight in the Province of York³; (2) five members appointed by the Church Commissioners, of whom one must be a diocesan bishop⁴; and (3) not more than two other members elected by the General Synod from among the beneficiaries of the Clergy Pensions Institution⁵. Members hold office for six years and casual vacancies are filled by nomination by the Church Commissioners or the Standing Committee of the General Synod as the case may be⁶.

1 Clergy Pensions Measure 1961, s 21 (1), (2). Impressions of the seal must be judicially noticed and must be authenticated by the signature of the secretary or of some other officer of the board authorised by the board for that purpose: s 21 (12). Any document purporting to be a document duly executed under the board's seal must be received in evidence and is deemed to be so executed unless the contrary is proved: s 21 (13).

2 Ibid s 21 (3); Synodical Government Measure 1969, s 2 (2).

3 Clergy Pensions Measure 1961, s 21 (3) (a); Synodical Government Measure 1969, s 2 (2).

4 Clergy Pensions Measure 1961, s 21 (3) (b).

5 Ibid s 21 (3) (c); Synodical Government Measure 1969, s 2 (2). As to the Clergy Pensions Institution, see the Clergy Pensions Measure 1961, s 39. For the manner in which the number is to decrease, see s 21 (3) proviso.

6 Ibid s 21 (4), (5); Synodical Government Measure 1969, s 2 (2). Vacating members are eligible for re-election or re-appointment (Clergy Pensions Measure 1961, s 21 (7)); members may be removed from office for good cause (s. 21 (8)); and seven members constitute a quorum (s. 21 (10)).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

751 The Church of England Pensions Board

TEXT AND NOTES 1-5--1961 Measure s 21(3) substituted: Pensions Measure 1997 s 8. Now the Board consists of 20 members (of whom eight must be representative of the members of the pension schemes administered by the Board) chosen in such manner, whether by election or by appointment, as may be prescribed by regulations made under the Clergy Pensions (Amendment) Measure 1972 s 6. See further the Church of England Pensions Regulations 1997, SI 1997/1929, regs 3 to 8. The chairman of the Board is appointed by the Archbishops of Canterbury and York, acting jointly, with the approval of the General Synod: reg 3. In addition to the eight members representative of the pensions schemes (as to whom see reg 4), six must be elected by the House of Laity, one appointed by the two archbishops acting jointly, one appointed by the two archbishops acting jointly after consulting representatives of dioceses, and one appointed by the Church Commissioners: reg 5. As to terms of office and casual vacancies see regs 6, 7. As to election, eligibility for re-election, and disqualification see reg 8.

A person may not be a member (or stand for membership) of more than one of the following bodies at any one time, namely: the Archbishops' Council (see PARA 427A), the Church Commissioners, the Pensions Board, the Appointments Committee (see PARA 383A) or the Business Committee (see PARA 383B): National Institutions Measure 1998 s 11.

NOTE 6--1961 Measure s 21(4)-(8) repealed: Pensions Measure 1997 s 10, Sch 2 Pt I. A quorum is now six, including at least two of the persons representing the pension schemes administered by the board: 1961 Measure s 21(10), amended by Pensions Measure 1997 s 10, Sch 1 para 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/C. ADMINISTRATION/752. Board's powers and duties.

752. Board's powers and duties.

The Church of England Pensions Board has the duty of controlling and administering the system of pensions¹. The power and obligation to make payments under the scheme is vested in the Church Commissioners, whose general fund is the source of all such payments². The commissioners have power to give directions to the board to increase the rates of pensions³, as to the general exercise of its functions⁴ and its employment of officers and servants⁵; and they must defray the board's working expenses (including the remuneration of its staff) out of the commissioners' general fund⁶.

The board has various powers, for example, the power to appoint servants and officers⁷, to appoint committees⁸, to delegate its functions to local committees⁹, to invest money and to acquire real and personal property¹⁰, which are ancillary to its principal functions¹¹. The board is a housing association¹², a trust corporation¹³ with extensive powers to act as trustee of charitable trusts for the benefit of retired clergymen, church workers and their widows and dependants¹⁴; and has power, both by itself and jointly with other persons, to provide, maintain and manage, homes for the residence of retired clergymen and church workers and their wives, widows and dependants¹⁵.

The board may also make loans to retired clergymen and church workers or their wives or widows to assist them to purchase, build, rebuild or improve dwelling houses, including flats, in which they reside or are to reside¹⁶.

The board has power to enter into reciprocal arrangements, on such terms as the Church Commissioners may approve, with the pensions authority of any church or organised body of clergy recognised by the Archbishop of Canterbury for this purpose¹⁷, and with the pensions authority controlling any scheme providing for servants of the Crown or of any public or local body, board or authority¹⁸. The board also has power regarding the application of any surplus in the Clergy (Widows and Dependants) Pension Fund¹⁹ as well as in relation to the Clergy Pensions Augmentation Fund²⁰, the Clergy (Widows and Dependants) Pensions Augmentation Fund²¹ and a Church Workers Pensions Augmentation Fund²².

1 Clergy Pensions Measure 1961, s 24.

2 Ibid ss 1 (1), 2 (3), 17 (1), (2). The commissioners may also make grants to the board out of their general fund of amounts expedient for any purpose connected with the payment of pensions to retired clergymen or their widows and dependants: s 17 (3).

3 Ibid ss 2 (1), 10 (2); Clergy Pensions (Amendment) Measure 1967, s 5; Clergy Pensions (Amendment) Measure 1972, s 44.

4 Clergy Pensions Measure 1961, s 25.

5 Ibid s 22 (3).

6 Ibid s 22 (2).

7 Ibid s 22 (1).

8 Ibid s 23 (1).

9 Ibid s 23 (2).

10 Ibid s 32. See eg para 1249 note 7 post.

- 11 See *ibid* ss 24, 26, 27. As to working expenses, see s 22 (2).
- 12 *Ie* within the meaning of the Housing Act 1957 (see s 189 (1)): see the Clergy Pensions Measure 1961, s 29.
- 13 *Ibid* s 31.
- 14 *Ibid* s 30.
- 15 *Ibid* s 26 (1) (a)-(d). For the meaning of 'dependant', see PARA 756 note 1 post; for the meaning of 'church worker', see PARA 758 note 1 post.
- 16 *Ibid* s 26 (1) (e); Clergy Pensions (Amendment) Measure 1967, s 4 (1).
- 17 Clergy Pensions Measure 1961, s 41.
- 18 *Ibid* s 42.
- 19 *Ibid* s 18 (3).
- 20 *Ibid* s 19; Clergy Pensions (Amendment) Measure 1967, s 4 (2).
- 21 Clergy Pensions Measure 1961, s 20; Clergy Pensions (Amendment) Measure 1967, s 4 (2).
- 22 Clergy Pensions Measure 1961, s 28; Clergy Pensions (Amendment) Measure 1967, s 4 (2).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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752 Board's powers and duties

TEXT AND NOTES--The Clergy Pensions (Amendment) Regulations 1988, SI 1988/2239 amend 1961 Measure by inserting new s 38A, subsequently amended by the Pensions Measure 1997 s 10, Sch 1 para 11 and SI 2005/3325. The Board now has power to

establish and administer, or participate in the administration of, an additional pensions scheme for the benefit of clerks, their widows and dependants and may, in conjunction with the exercise of these powers, acquire and hold property, whether real or personal, either alone or jointly with others. The scheme established will be supplementary to the past service scheme and the funded scheme (as to which see PARA 738A.1).

The Board is responsible for the administration of the General Purposes Fund: see the Church of England (Pensions) Measure 2003 ss 1, 2; and PARA 752A.

TEXT AND NOTE 1--Replaced. The function of the board is now expressed as the administration of the past service scheme and the funded scheme: 1961 Measure s 24, amended by the Pensions Measure s 10, Sch 1 para 8.

TEXT AND NOTE 2--Commissioners have power to make, out of general fund, payments of such amounts as are required by the additional scheme, established under the 1981 Regulations, to be paid by the employer of a clerk: see Clergy Pensions Measure 1961 s 38A(3); SI 1988/2239.

NOTE 2--1961 Measure s 17(1), (2) substituted: Pensions Measure 1997 s 10, Sch 1 para 5. Now commissioners may also make grants out of their general fund or loans of amounts expedient and, in the case of any loan, on such terms as they think fit, for any purpose connected with the payment of pensions to retired scheme members or their widows and dependants or with the powers of the Board under the 1961 Measure s 26 (see TEXT AND NOTES 15, 16): 1961 Measure s 17(3); Clergy Pensions (Amendment) Measure 1982 s 1; SI 2005/3325.

NOTE 3--1961 Measure s 10(2), 1967 Measure s 5 and 1972 Measure s 4(4) (wrongly cited as s 44) revoked: SI 1985/2081 (see PARA 754).

TEXT AND NOTE 4--After 'functions' add 'in relation to the past service scheme': 1961 Measure s 25, amended by Pensions Measure 1997 s 10, Sch 1 para 9.

TEXT AND NOTE 5--1961 Measure s 22(3) substituted: Pensions Measure 1997 s 10, Sch 1 para 7. The power to give directions under that provision is removed. Commissioners may now make payments to the Board out of their general fund in respect of administrative work in relation to the past service scheme (as to which see PARA 738A.1), and other matters in respect of which the commissioners have a financial interest.

TEXT AND NOTE 6--Salaries and working expenses must now be defrayed by the Board out of funds administered by it: 1961 Measure s 22(2), amended by Pensions Measure 1997 s 10, Sch 1 para 7.

NOTE 7--As to the transfer of officers from the Board see National Institutions Measure 1998 s 6, Sch 3.

TEXT AND NOTES 8, 9--1961 Measure s 23 (power to appoint and delegate to committees) repealed: Pensions Measure 1997 s 10, Sch 2 Pt I.

TEXT AND NOTE 10--1961 Measure s 32 amended: 1988 Measure s 14. As to investment of money comprised in certain pension funds, see 1961 Measure s 32A; 1982 Measure s 5.

NOTE 11--1961 Measure s 27 amended: 1988 Measure s 13; SI 2005/3325; see PARA 758.

NOTE 12--For meaning of 'housing association', see now Housing Associations Act 1985 s 1(1). 1961 Measure s 29 consequently amended: 1988 Measure Sch 2 para 12.

TEXT AND NOTE 14--References to widows now references to widows and widowers: 1988 Measure Sch 2 para 13.

1961 Measure s 30 further amended so as to include reference to surviving civil partners: SI 2005/3325.

TEXT AND NOTE 15--Reference to clerks and churchworkers now a reference to clerks, deaconesses and licensed lay workers; reference to wives and widows now a reference to spouses, former spouses, widows and widowers: 1961 Measure s 26(1)(a), (b); Church of England (Pensions) Measure 1988 s 12(1)(a); Church of England (Pensions) Measure 2003 s 3(a), (b). 1961 Measure s 26(1)(a), (b) further amended so as to include references to civil partners, former civil partners and surviving civil partners: SI 2005/3325. As to the application of the 1961 Measure s 26 to clerks in holy orders, deaconesses and licensed lay workers who have resigned from ecclesiastical service because of their opposition to women priests, see the Ordination of Women (Financial Provisions) Measure 1993 s 2 (see PARA 657C.1).

TEXT AND NOTE 16--Repealed: Church of England (Pensions) Measure 1988 s 12(1)(b). Corresponding provisions contained in 1961 Measure s 26(3A); 1982 Measure s 2(1); Deacons (Ordination of Women) Measure 1986 Schedule para 3 and the 1988 Measure s 12(2), which also enable loans to be made for this purpose to clergymen and church workers who have attained retiring age or a specified age below retiring age, or their spouses. 1961 Measure s 26(3A) amended so as to include references to civil partners, former civil partners and surviving civil partners: SI 2005/3325. See also the Church of England (Pensions) Measure 2003 s 1(3) (see PARA 752A NOTE 5).

TEXT AND NOTES 17-22--See 1988 Regulations, SI 1988/2256, regs 19-22 which enable clergy pensions scheme to be contracted-out under Social Security Pensions Act 1975 Pt III (ss 26-52).

NOTE 19--1961 Measure s 18(3) now as amended by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 12. 1961 Measure s 18(2) amended and s 18(3) further amended: 1988 Measure Sch 2 para 7.

TEXT AND NOTES 20-22--1961 Measure ss 19, 20, 28 are repealed, and the Augmentation Funds referred to are now dissolved: see the Church of England (Pensions) Measure 2003 ss 2, 6, Schedule. The purposes for which they were established are now subsumed in those of the General Purposes Fund: see PARA 752A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/C. ADMINISTRATION/752A. General purposes fund.

752A. General purposes fund.

The Church of England Pensions Board has the function of administering the General Purposes Fund¹. The Board must pay into that fund any testamentary or other gifts made to the board² (1) for the relief of poverty in the case of any retired clerk or church worker³; (2) for the relief of poverty in the case of any widow, widower, former spouse, surviving civil partner or former civil partner, child or dependant of a deceased clerk or church worker⁴; (3) for the provision⁵, maintenance or management of homes of residence for retired clerks and church workers and their spouses or former spouses or civil partners or former civil partners⁶; and (4) for the provision, maintenance or management of homes of residence for the widows, widowers, former spouses, surviving civil partners, former civil partners and dependants of deceased clerks or church workers⁷. The Board may at its discretion⁸ apply the fund or part of it for any of the purposes mentioned above, and may borrow money on the security of the fund's assets to defray expenditure incurred for any of those purposes⁹.

The Board must pay into a separate account of the General Purposes Fund any sums received from a diocese for the relief of poverty in the case of any widow, widower, former spouse, surviving civil partner, former civil partner or dependant of a deceased clerk¹⁰ and must hold such sums on behalf of the diocese by which they were paid and add interest to those sums¹¹. The Board must pay out of this separate account any payments required by the diocese to be made for those purposes¹².

1 Church of England (Pensions) Measure 2003 s 1(1). The fund was established by resolution of the Board on 17 September 1975.

The Clergy Pensions Augmentation Fund, the Clergy (Widows and Dependants) Pensions Augmentation Fund and the Church Workers Pensions Augmentation Fund are dissolved, and sums held in those funds are now transferred to the General Purposes Fund: Church of England (Pensions) Measure 2003 s 2(1). Any testamentary or other sums purporting to be donated to the dissolved funds are now deemed to be donated to the General Purposes Fund: s 2(2).

The purposes for which the fund is held under the 2003 Measure s 1(2) (see TEXT AND NOTES 2-7), replace the purposes for which it was held before that provision came into force: s 1(5).

2 Church of England (Pensions) Measure 2003 s 1(2).

3 Ibid s 1(2)(a).

4 Ibid s 1(2)(b) (amended by SI 2005/3325).

5 The reference in heads (3) and (4) in the text to the provision of homes of residence includes reference to the making of loans under the Clergy Pensions Measure 1961 s 26(3A) (see PARA 752 TEXT AND NOTE 16): Church of England (Pensions) Measure 2003 s 1(3).

6 Ibid s 1(2)(c) (amended by SI 2005/3325).

7 Church of England (Pensions) Measure 2003 s 1(2)(d) (amended by SI 2005/3325).

8 However, this is subject to any conditions imposed by donors or testators, and to the Church of England (Pensions) Measure 2003 s 2(3), (4) (see TEXT AND NOTES 10-12): s 1(4).

9 Ibid s 1(4). For the purposes of the power to borrow money on the security of the assets of the fund, a home of residence vested in the Board and certified on its behalf to be maintained to a material extent out of the fund is deemed to be an asset of the fund: Clergy Pensions (Amendment) Measure 1967 s 4(4) (amended by the Church of England (Pensions) Measure 2003 s 2(5)).

10 This includes sums received under the Clergy Pensions Measure 1961 s 20(2); Church of England (Pensions) Measure 2003 s 2(3).

11 See *ibid* s 2(3) (amended by SI 2005/3325).

12 See Church of England (Pensions) Measure 2003 s 2(4).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

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753. Determination of questions.

In connection with clergy pensions questions may arise as to:

- 10 (1) whether any clergyman is performing or has performed pensionable service¹;
- 11 (2) the length of the qualifying period of pensionable service performed by any clergyman or the date on which it terminated²;
- 12 (3) whether a clergyman satisfies any other conditions laid down for the receipt of a pension or the terms and conditions upon which his pension is granted or agreed to be paid³;
- 13 (4) whether a clergyman has retired or on what day he retired⁴;
- 14 (5) the rate at which a pension is to be paid and whether any deductions are to be made from it in respect of arrears of contributions⁵;
- 15 (6) the right of a clergyman to a repayment of any contributions paid by him⁶; or
- 16 (7) the rights of a widow, child or dependant of a clergyman or of the clergyman himself (including the question whether any person is a dependant of a clergyman⁷).

If any such question arises it is to be decided by the Church of England Pensions Board at a meeting specially convened for that purpose⁸. Any person aggrieved by the board's decision may appeal from that decision to the High Court and the decision of that court is final⁹. The appeal is heard by a single judge of the Chancery Division¹⁰, and is brought by originating motion, notice of which must be served on the board, and the appeal must be entered, within twenty-eight days after the date of the board's decision¹¹.

1 Clergy Pensions Measure 1961, s 38 (1) (a). For the meaning of 'pensionable service', see PARA 742 ante.

2 Ibid s 38 (1) (b). For the meaning of 'qualifying period of pensionable service', see PARA 742 ante.

3 Ibid s 38 (1) (c).

4 Ibid s 38 (1) (d).

5 Ibid s 38 (1) (e).

6 Ibid s 38 (1) (f).

7 Ibid s 38 (1) (g).

8 Ibid s 38 (1). Before giving a decision under this section, the board must give the clergyman or other person concerned, or his agent, an opportunity of being heard: s 38 (2). The Arbitration Act 1950 does not apply to any proceedings under this section: Clergy Pensions Measure 1961, s 38 (4).

9 Ibid s 38 (3). For the meaning of 'person aggrieved', see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

10 Ibid s 38 (3); RSC Ord. 93, r 10 (2) (j).

11 Clergy Pensions Measure 1961, s 38 (3); RSC Ord. 55, rr 3, 4.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

753 Determination of questions

TEXT AND NOTE 1--Reference to any clerk is now to any clerk, deaconess or licensed lay worker: 1961 Measure s 38(1)(a); 1988 Measure Sch 2 para 16.

TEXT AND NOTES 2-11--'Clerk' now 'scheme member': 1961 Measure s 38; 1988 Measure Sch 2 para 16.

TEXT AND NOTE 7--Reference to widows is now to widows, widowers and surviving civil partners: 1961 Measure s 38(1)(g) (amended by the 1988 Measure Sch 2 para 16; and SI 2005/3325).

NOTE 8--Reference to Arbitration Act 1950 is now to Arbitration Act 1996 Pt I (ss 1-84): 1961 Measure s 38(4) (amended by 1996 Act Sch 3 para 15).

NOTE 10--RSC Ord 93 r 10 revoked: SI 2007/2204.

NOTE 11--RSC Ord. 55 revoked: SI 2002/221.

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D. WIDOWS' AND DEPENDANTS' PENSIONS

754. Pensions for clergy widows.

Subject to what follows, where a clergyman who has performed a qualifying period of pensionable service¹ dies, on or after 1st April 1961², leaving a widow³ she is entitled to receive a pension from the Church of England Pensions Board for the remainder of her life⁴. If it thinks fit the board may discontinue the payment of a pension to a widow if she re-marries and may if it thinks fit resume the payment to a widow of a pension terminated at any time on her remarriage⁵.

If the clergyman was in receipt of a pension at the time of his death⁶ the widow's pension is equal to one third of that pension⁷. If he was not, it is equal to one-third of the pension to which he would have been entitled in respect of the period of pensionable service (together with any appropriate increase⁸) performed by him if he had retired at the retiring age⁹ after having performed the same period of pensionable service¹⁰.

The Church Commissioners may, at the board's request authorise the board to augment, by such sum and during such period as may be specified, the pension payable to any individual widow¹¹. Where a clergyman has surrendered to the board a part of his right to a pension¹² he is deemed, for the purposes of a pension for his widow, to have received the pension he would have received if he had not entered into that agreement¹³. Where a clergyman's pension has been suspended¹⁴ and the clergyman dies during its suspension leaving a widow entitled to a pension, it is payable at the rate of one-third of the pension received by him before the suspension¹⁵ or at the rate of one-third of the pension to which he would have been entitled in respect of the period of pensionable service performed by him if he had retired at the retiring age after having performed the same period of pensionable service¹⁶, whichever is the greater¹⁷.

The commissioners must pay the board out of their general fund such sum as the board requires for payments to be made to widows¹⁸.

1 For the meaning of 'qualifying period of pensionable service', see PARA 742 ante. In determining this question no account is to be taken of any period of service performed before the clergyman received a payment, if any, under the Clergy Pensions Measure 1961, s 7 (2), which has not been repaid: s 10 (4). In the case of a widow whose husband died on or after 9th August 1972 the Church of England Pensions Board may if it thinks fit in exceptional circumstances grant a pension in respect of a period after 5th April 1975 to her notwithstanding that her husband had performed less than five years' pensionable service (or, if he died before 6th April 1975, less than ten years' pensionable service): s 10 (1B); Clergy Pensions (Amendment) Regulations 1975, S.I. 1975 No. 136, reg. 8 (2)-(4). For the position before 6th April 1975, see the Clergy Pensions Measure 1961, s 10 (1) proviso (i); Clergy Pensions (Amendment) Measure 1972, s 4 (1) (b) (revoked).

2 As to the payment of pensions to widows of clergymen who died before this date, see the Clergy Pensions Measure 1961, s 10 (2); Clergy Pensions (Amendment) Measure 1967, s 5 (b); Clergy Pensions (Amendment) Measure 1972, s 4 (4).

3 Prior to 9th August 1972 it was necessary that they had been married for not less than five years, that the widow was being maintained by the clergyman at the time of his death, and (in the case of a retired clergyman) that the marriage had taken place before his retirement: Clergy Pensions Measure 1961, s 10 (1); Clergy Pensions (Amendment) Measure 1972, s 41 (now amended by the Clergy Pensions (Amendment) Regulations 1975, reg. 8). No pension, however, may be paid in respect of a period before 6th April 1975: reg. 8 (4).

If a clergyman's marriage took place after his retirement from pensionable service and within six months of his death on or after 9th August 1972 his widow is not entitled to a pension under these provisions, but the board

may if it thinks fit grant one to her in respect of a period after 5th April 1975: Clergy Pensions Measure 1961, s 10 (1A); Clergy Pensions (Amendment) Regulations 1975, reg. 8 (2)-(4). For the position before 6th April 1975, see the Clergy Pensions Measure 1961, s 10 (1) proviso (i); Clergy Pensions (Amendment) Measure 1972, s 4 (1) (b) (revoked).

The position of the divorced wife of a deceased clergyman is not clear. As to the attitude of the Church to divorce, see the resolutions of the Convocations of Canterbury and York dated June 1938, and Winnett, *The Church and Divorce*, A Factual Survey (Mowbrays 1968). See also *Payne-Collins v Taylor Woodrow Construction Ltd* [1975] 1 All ER 898, [1975] 2 WLR 386, and PARA 658 ante. However, if the divorced wife is a widow within the meaning of the Clergy Pensions Measure 1961 the position of a woman whom the clergyman had married after the divorce is in even greater doubt.

4 Clergy Pensions Measure 1961, s 10 (1); Clergy Pensions (Amendment) Measure 1972, s 4 (1) (a) (revoked); Clergy Pensions (Amendment) Regulations 1975, reg. 8 (2).

5 Clergy Pensions Measure 1961, s 10 (1c); Clergy Pensions (Amendment) Regulations 1975, reg. 8 (2). This applies in the case of a widow whose husband died on or after 9th August 1972 (reg. 8 (3)). but no pension may be paid in respect of a period before 6th April 1975 (reg. 8 (4)). For the position before 6th April 1975, see the Clergy Pensions Measure 1961, s 10 (1) proviso (ii); Clergy Pensions (Amendment) Measure 1972, s 4 (1) (b) (revoked).

6 Where directions given by virtue of the Clergy Pensions Measure 1961, s 2 (1), have effect as from a date before 9th August 1972 and a clergyman to whom they are or would have been applicable dies on or after that date and before receiving the increased pension he is deemed, for the purposes of calculating his widow's pension, to have been in receipt of that increased pension at the time of his death: Clergy Pensions (Amendment) Measure 1972, ss 2 (1), 4 (3).

7 Clergy Pensions Measure 1961, s 10 (1) (a).

8 See note 10 infra.

9 For the meaning of 'retiring age' see PARA 743 note 2 ante.

10 Clergy Pensions Measure 1961, s 10 (1) (b). The Church Commissioners have power to give directions to the board for increasing the rate of the pension payable: s 10 (2); Clergy Pensions (Amendment) Measure 1972, s 4 (4). In determining the rate of pension received by a clergyman no account is to be taken of any augmentation or supplementary pension under the Clergy Pensions Measure 1961, s 2, or the Clergy Pensions Measure 1948, s 8, or of any commutation: Clergy Pensions Measure 1961, s 10 (5).

11 Ibid s 10 (2A); Clergy Pensions (Amendment) Measure 1972, s 4 (5).

12 Ie under the Clergy Pensions Measure 1961, s 15: see PARA 756 post.

13 Ibid s 10 (6).

14 Ie under ibid s 4: see PARA 745 ante.

15 Ibid s 10 (7) (a).

16 Ibid s 10 (7) (b).

17 Ibid s 10 (7).

18 Ibid s 17 (2).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England

Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

754-758 Widows' and Dependants' Pensions

As to the application of the General Purposes Fund to the relief of poverty, etc of widows. Widowers, former spouses, children and dependants of deceased clergy and church workers see PARA 752A.

754 Pensions for clergy widows

TEXT AND NOTES 1-17--Replaced. See now Church of England Pensions Regulations 1988, SI 1988/2256, regs 14-18; SI 1992/1748, SI 1997/1929; Pensions Measure 1997 Sch 1 Pt II, which provide for non-contributory pensions for widows and children and reproduce the Church Commissioners' power to give directions to the board for increasing the rate of pension payable.

Where the service of a clerk becomes contracted-out employment by reference to the clergy pensions scheme (in accordance with Social Security Pensions Act 1975 Pt III (ss 26-52)), the rate of entitlement to a widow's pension is governed by the Church of England Pensions Regulations 1988, SI 1988/2256, regs 19-22; SI 1992/1748.

A clerk is no longer liable to pay contributions under any agreement under the 1961 Measure s 15: Church of England (Pensions) Measure 1988 s 9.

As to pensions for widows and dependants of deaconesses and lay workers, see Deaconesses and Lay Workers (Pensions) Measure 1980 (see PARA 739A).

NOTE 18--1961 Measure s 17(2) substituted, so that reference is now to the past service scheme (see PARA 738A.1) rather than widows: Pensions Measure 1997 s 10, Sch 1 para 5.

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755. Clergy contributory pensions.

Any clergyman ordained after 31st December 1947¹ and before 22nd March 1967² who is performing pensionable service³ must, unless he gives written notice to the Church of England Pensions Board⁴, pay contributions⁵ to the board⁶. The liability ceases with the half yearly payment next before the contributor attains the age of seventy years or receives a pension by reason of infirmity or ceases to perform pensionable service or dies, whichever first happens⁷.

On the death of a clergyman⁸ who has paid such contributions from the date on which he first becomes subject to these provisions to his attainment of the age of seventy years, his receiving a pension by reason of infirmity or his death, whichever first occurs, his widow (so long as she so remains⁹) is to be paid a pension of £50 per annum as from his death¹⁰, and a pension of £25 per annum is payable as from his death for the benefit of each of his children¹¹ until that child attains the age of eighteen years¹².

1 A clergyman ordained before this date, but after 1st July 1936, but who has paid contributions under the Clergy Pensions Measure 1948, Part II (ss. 10-16 (repealed)), may continue or resume those contributions: Clergy Pensions Measure 1961, s 14 (1). As to the payment of benefits accruing under these provisions, see s 14 (2), (3). As to the repayment of contributions, see s 14 (4). As to the widows of clergy transferred to other churches or serving with certain authorities, see the Clergy Pensions (Amendment) Measure 1972, s 4 (6), and PARA 752, text to notes 17, 18 ante.

2 Clergy Pensions (Amendment) Measure 1967, s 1 (1).

3 For the meaning of 'pensionable service', see PARA 742 ante.

4 Clergy Pensions (Amendment) Measure 1967, s 1 (2). If a contributor is more than twelve months in arrear he is deemed to have given such notice; but the board may direct that this provision shall have no effect as respects the period before the direction: s 1 (3). In either case, provision is made as to benefits already accrued: s 1 (4).

5 As to the rates of contribution and the dates for payment, see the Clergy Pensions Measure 1961, s 11 (1), (2), (5). Contributions may be deducted from the clergyman's stipend: s 43.

6 Ibid s 11 (1). No contribution is repayable: s 11 (4).

7 Ibid s 11 (3). As to the preservation of pension rights after the termination of liability under s 11 (3) (c), see s 13.

8 As to the widows of clergy transferred to other churches or serving with certain authorities, see the Clergy Pensions (Amendment) Measure 1972, s 4 (5), and PARA 752, text to notes 17, 18 ante.

9 The words in parentheses do not apply in relation to any widow who on 9th August 1972 is in receipt of a pension under the Clergy Pensions Measure 1961, s 12, or afterwards becomes entitled to one: Clergy Pensions (Amendment) Measure 1972, s 4 (7).

10 Clergy Pensions Measure 1961, s 12 (a).

11 'Child' includes a step-child and an adopted child: ibid s 46 (1).

12 Ibid s 12 (b).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

754-758 Widows' and Dependants' Pensions

As to the application of the General Purposes Fund to the relief of poverty, etc of widows. Widowers, former spouses, children and dependants of deceased clergy and church workers see PARA 752A.

755 Clergy contributory pensions

TEXT AND NOTES--The Clergy Pensions Measure 1961 ss 11-13 which provide for the payment of contributions towards pensions for widows and children are repealed: Church of England (Pensions) Measure 1988 s 7. A clerk is no longer liable to make contributions. Any benefits which would have been payable on the clerk's death are now payable at a reduced rate to be certified by an actuary. The Clergy Pensions (Amendment) Measure 1967 s 1 is also repealed.

No contribution paid by a clerk under the 1961 Measure s 11 or 14 may be repaid: 1988 Measure s 10(2).

Payments to a clerk who has ceased to make contributions are not affected.

NOTE 1--Clergy Pensions Measure 1961 s 14 repealed: 1988 Measure s 8. A clerk shall make no further contribution and, on his death, benefits will be paid at a reduced rate.

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756. Voluntary clergy pensions.

The Church of England Pensions Board may enter into an agreement with any clergyman for the payment, as from his death, of a pension to his widow or to such of his dependants¹ as may be specified in the agreement². The consideration for any such agreement must be actuarially adequate and may consist of either periodical or other contributions in money³ or of a surrender to the board⁴ of any part of his rights to a pension or a return of contributions⁵. However: (1) he may not surrender such a proportion, or a prospective right to such a proportion, of the pension as would, in the board's opinion, if surrendered, leave him without adequate provisions for his needs, and in no case may he surrender more than one-half of a pension⁶; and (2) no prospective right to a pension may be surrendered except in contemplation of his retirement and, if his retirement does not take place within three months from the surrender, the surrender is void⁷.

Any pension payable by virtue of such an agreement is payable in addition to and not in substitution for any pension or sum payable to the widow or dependant under any other provision of the Clergy Pensions Measures 1961 to 1972⁸.

1 'Dependant' has such meaning as the board may determine for the purposes of each case, having regard to all the circumstances: Clergy Pensions Measure 1961, s 46 (1).

2 Ibid s 15 (1). As to the provisions of the agreement, see s 15 (3).

3 Contributions may be deducted from the clergyman's stipend: ibid s 43.

4 This provision applies notwithstanding ibid s 35 (2), for which see PARA 747 ante.

5 Ibid s 15 (2). As to the return of contributions, see s 14 (4).

6 Ibid s 15 (2) proviso (a).

7 Ibid s 15 (2) proviso (b).

8 Ibid s 15 (4).

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

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754-758 Widows' and Dependants' Pensions

As to the application of the General Purposes Fund to the relief of poverty, etc of widows. Widowers, former spouses, children and dependants of deceased clergy and church workers see PARA 752A.

756 Voluntary clergy pensions

TEXT AND NOTES--The Clergy Pensions Measure 1961 ss 14, 15 which deal with voluntary contributions are repealed: Church of England Pensions Measure 1988 ss 8, 9. The liability of a clerk to pay contributions under an agreement pursuant to s 15 of the 1961 Measure ceases. Benefits will be paid at a reduced rate. No contribution by a clerk under the 1961 Measure s 11 or 14 may be repaid: 1988 Measure s 10(2). Payments to a clerk who has ceased to make contributions are not affected.

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757. Administration.

The rules governing the payment and application of pensions for clergy widows and dependants are, in general, the same as for clergy pensions¹. All contributions are paid into the Clergy (Widows and Dependants) Pensions Fund², which is administered by the Church of England Pensions Board³.

A widow and dependants committee must be established in each diocese for the purpose of watching over the interests of the widows and dependants of the deceased clergy⁴.

1 See the Clergy Pensions Measure 1961, ss 35, 36, and PARA 747 ante.

2 Ibid s 18 (2). As to any surplus, see s 18 (3).

3 Ibid s 18 (1). As to the board, see PARA 751 ante.

4 Ibid s 40.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

754-758 Widows' and Dependants' Pensions

As to the application of the General Purposes Fund to the relief of poverty, etc of widows. Widowers, former spouses, children and dependants of deceased clergy and church workers see PARA 752A.

757 Administration

NOTE 2--1961 Measure s 18(3) amended by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 12. 1961 Measure s 18(2)(3) amended: Church of England (Pensions) Measure 1988 Sch 2 para 7.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(1) CLERGY/(vi) Clergy Pensions/D. WIDOWS' AND DEPENDANTS' PENSIONS/758. Pensions for church workers, their widows and dependants.

758. Pensions for church workers, their widows and dependants.

The Church of England Pensions Board has power to establish, administer or participate with others in the administration of pensions schemes for the benefit of church workers¹ or their widows or dependants².

¹ 'Church worker' means any person (other than a clerk in holy orders) who is or has been employed in spiritual or temporal work in connection with the Church of England: Clergy Pensions Measure 1961, s 46 (1).

² Ibid s 27. For the meaning of 'dependant', see PARA 756 note 1 ante.

UPDATE

738-758 Clergy Pensions

Clergy Pensions Measure 1961 Pts I (ss 1-9), II (ss 10-16), ss 35-37, 41-43, 45, Schs 1, 3; Clergy Pension (Amendment) Measure 1972 ss 2, 3, 5(1), (2); Church of England (Pensions) Measure 1988 ss 1-4, 6, 15, Sch 1, Sch 2 paras 2-6, 15, 18, 19, 20(a), (c), 21, 25-33; Clergy Pensions (Amendment) Regulations 1975, SI 1975/136; Clergy Occupational Pensions Scheme Regulations 1977, SI 1977/1146; Clergy Pensions (Amendment) Regulations 1985, SI 1985/2081, consolidated: Church of England Pensions Regulations 1988, SI 1988/2256 (amended by the Pensions Measure 1997 s 10, Sch 1 Pt II, Sch 2 Pt II; and SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2007/1898, SI 2009/2109). Minor amendments made relate only to administration and do not affect entitlement. The financial and constitutional provisions of the 1961 Measure are not affected.

The 1988 Regulations Pt II deals with pensions for Scheme members; Pt III with pensions for widows, widowers and children; Pt IV provides for contracted-out employment; and Pt V provides for reciprocal arrangements and accrued rights.

There are now established, by the Pensions Measure 1997, two schemes with respect to the pensions and lump sum payments payable to clerks, deaconesses and licensed lay workers and their widows, widowers and dependants, namely (1) the Church of England Pensions Scheme, relating exclusively to past service (referred to as the 'past service scheme'), and comprising the provisions of existing legislation; and (2) the Church of England Funded Pensions Scheme, relating to future service (referred to as the 'funded scheme'): see PARA 738A.

754-758 Widows' and Dependants' Pensions

As to the application of the General Purposes Fund to the relief of poverty, etc of widows. Widowers, former spouses, children and dependants of deceased clergy and church workers see PARA 752A.

758 Pensions for church workers, their widows and dependants

TEXT--Sums paid for the provision of pension benefits for deaconesses and lay workers may be paid into the Church Workers Pension Fund: Deaconesses and Lay Workers (Pensions) Measure 1980 s 1(2); see PARA 739A.

1980 Measure s 1(1)(a) amended: 1988 Measure Sch 2 para 23; Pensions Measure 1997 s 10, Sch 1 para 18. The reference to widows is now a reference to widows and widowers, and limited to pensions paid or payable under the past service scheme (as to which see PARA 738A.1), or in respect of service which ended before 1 December 1988.

TEXT AND NOTE 2--Reference to church workers or the widows or dependants now includes a reference to widowers. A deaconess or licensed lay worker who has performed pensionable service for the purposes of the 1961 Measure is not eligible to join a scheme administered under the 1961 Measure s 27(2)(3)(4); 1988 Measure s 13, except at the discretion of the board. The board may grant a clerk permission to join a scheme under s 27. A person who is a member of that scheme shall be disqualified if that person subsequently performs service which is pensionable for the purposes of the 1961 Measure.

1961 Measure s 27(1) amended so as to include reference to surviving civil partners: SI 2005/3325.

NOTE 4--References to widows are now references to widows and widowers. The references to deceased clerks are now references to deceased clerks, deaconesses or licensed lay workers: 1988 Measure Sch 2 para 17.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(2) DEACONESSES/759. The order of deaconesses.

(2) DEACONESSES

759. The order of deaconesses.

The order of deaconesses is the one order of ministry in the Church of England to which women are admitted by prayer and the laying on of hands by the bishop¹. A deaconess may accept membership of any lay assembly of the Church of England². It belongs to the office of a deaconess, in the place where she is licensed to serve³ and under the direction of the minister, to lead the people in public worship, to exercise pastoral care, to instruct the people in the Christian faith and to prepare them for the reception of the sacraments⁴.

A deaconess may be authorised by the bishop and invited by the minister⁵ to say or sing Morning or Evening Prayer, save for the absolution⁶; she may be authorised by the bishop⁷ and invited by the minister⁸ to distribute the holy sacrament of the Lord's Supper to the people and to read the epistle and Gospel at the celebration of the Holy Communion⁹. She may also be authorised by the bishop at the invitation of the minister of a parish or an extra-parochial minister¹⁰ to preach at divine service, to church women¹¹, to baptise in the absence of the minister¹¹, with the goodwill of the persons responsible to bury the dead or read the burial service before, at or after a cremation¹¹, and to publish banns of marriage at Morning and Evening Prayer on occasions when a lay person is permitted by the statute law to do so, and in accordance with the requirements of that law¹².

Any deaconess licensed to the parish is a member of the parochial church council¹³.

1 Revised Canons Ecclesiastical, Canon D1 para 1 (substituted by Canon promulgated 20th February 1973). As to the extent to which deaconesses are bound by the canons, see PARA 308 ante.

2 Ibid Canon D1 para 5 (substituted by Canon promulgated 20th February 1973).

3 See PARA 761 post. A pastoral scheme may provide for the employment of deaconesses in relation to any benefice: Pastoral Measure 1968, s 26 (c); see PARA 873 post.

4 Revised Canons Ecclesiastical Canon D1 para 2 (substituted by Canon promulgated 20th February 1973).

5 I.e in accordance with ibid Canon B11 para 4: see PARA 989 post.

6 Ibid Canon D1 para 3 (a) (substituted by Canon promulgated 20th February 1973). If no priest is present she reads, in place of the absolution, the collect for the twenty-first Sunday after Trinity: Book of Common Prayer, Order for Morning Prayer and Order for Evening Prayer, rubric following the general confession; Prayer Book (Further Provisions) Measure 1968, s 1 (2) (repealed); Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 4. If a priest is present, he pronounces the absolution.

7 I.e in accordance with the Revised Canons Ecclesiastical, Canon B12 para 3 (amended by Amending Canon No. 1): see PARA 973 post.

8 I.e in accordance with ibid Canon B12 para 4: see PARA 973 post.

9 Ibid Canon D1 para 3 (b) (substituted by Canon promulgated 20th February 1973).

10 'Extra-parochial minister' means a minister licensed under the Extra-Parochial Ministry Measure 1967, s 2, to perform at any of the institutions therein mentioned all or any of the functions as to preaching, churching women, baptising, burying etc. mentioned in the text: Deaconesses and Lay Ministry Measure 1972, s 1 (5), applied by the Revised Canons Ecclesiastical, Canon D1 para 4 (substituted by Canon promulgated 20th February 1973). When a cure is vacant the invitation may come from a rural dean: Canon D1 para 4 (substituted by Canon promulgated 20th February 1973).

11 This provision does not apply in the Channel Islands: *ibid* Canon D1 para 6 (substituted by Canon promulgated 20th February 1973).

12 *Ibid* Canon D1 para 4 (a)-(d) (substituted by Canon promulgated 20th February 1973); Deaconesses and Lay Ministry Measure 1972, s 1 (1). For the circumstances in which a layman may publish banns, see the Marriage Act 1949, s 9, and PARA 1018 post. The General Synod may provide by canon for these functions (other than the publication of banns) to be performed also by licensed lay workers, readers and other lay persons having such qualifications as may be prescribed by canon: Deaconesses and Lay Ministry Measure 1972, s 1 (1). A reader may publish banns: see PARA 763 post.

13 Church Representation Rules r 12 (1) (b), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 569 ante.

UPDATE

759 The order of deaconesses

TEXT AND NOTES--The General Synod may by canon empower the bishop of a diocese, in the case of a benefice in his diocese in respect of which a team ministry is established (1) to grant a licence to deaconesses to serve in the area of the benefice for a term of years specified in the licence, and (2) to revoke the licence summarily and without further process before the expiration of the specified term for such cause and subject to such conditions as the canon provides: Deaconesses and Lay Ministry Measure 1972 s 1A, added by the Team and Group Ministries Measure 1995 s 13. This is without prejudice to the General Synod's powers under the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(1) (see PARA 761): 1972 Measure s 1A.

TEXT--As to pensions for deaconesses and their dependants, see Deaconesses and Lay Workers (Pensions) Measure 1980 (para 739A).

NOTE 3--1968 Measure s 26(c) repealed: Pastoral (Amendment) Measure 1982 s 19.

NOTE 10--1967 Measure s 2 amended: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 5 (see PARA 731).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(2) DEACONESSES/760. Admission to order of deaconesses.

760. Admission to order of deaconesses.

Every woman to be admitted to the order of deaconesses must be at least twenty-five years of age, baptised and confirmed; and must satisfy the bishop that she is a regular communicant of the Church of England¹. She must present to the bishop of the diocese:

(1) a certificate signed by a person approved by the bishop that she has been nominated to exercise the office of deaconess within his diocese, either in a cure of souls or in a wider area, or is a teacher or lecturer in a school or college situated within that diocese, or is living under vows in the house of a religious order or community there situated²;

(2) her birth certificate³;

(3) a certificate or other evidence of her baptism and confirmation⁴;

(4) testimonials of her good life, her conformity to the doctrine, discipline and worship of the Church of England, and of her general fitness for the office of deaconess, from two beneficed priests, a deaconess holding a bishop's licence and the head of the house, hostel or college in which she has been trained for the office of deaconess⁵; and

(5) a certificate signed by the officiating minister and one churchwarden of the parish or ecclesiastical district in which she usually resides, or in which her name is on the electoral roll, that notice in a form approved by the ordinary was given in the church of that parish or district in the time of divine service on some Sunday at least a month before the day appointed for her admission to the order of deaconesses, of her intention of offering herself as a candidate for the order, and that no cause or impediment why she should not be admitted to the order was alleged by any person present⁶.

No woman may be admitted to the order unless she is found on examination, held by the bishop or by competent persons appointed by him for the purpose, to possess a sufficient knowledge of Holy Scripture and of the doctrine, discipline and worship of the Church of England⁷. Nor may any woman be admitted to the order who is suffering, or who has suffered, from any physical or mental infirmity which, in the bishop's opinion, will prevent her from exercising the office of deaconess⁸.

Admission, which is by prayer and the laying on of hands by the bishop⁹, must be according to the duly authorised¹⁰ form of service¹¹. Before her admission the deaconess must, in the presence of the bishop by whom she is to be admitted, or the commissary of such bishop, make and subscribe a declaration of assent, an oath of canonical obedience and a promise to use only the forms of service authorised or allowed by canon¹².

The names of all persons admitted to the order must be entered in a register kept by the diocesan bishop for that purpose¹³.

1 Revised Canons Ecclesiastical Canon D2, PARA 1.

2 Ibid Canon D2 para 2a.

3 Ibid Canon D2 para 2b (i).

4 Ibid Canon D2 para 2b (ii).

5 Ibid Canon D2 para 2b (iii).

- 6 Ibid Canon D2 para 2b (iv).
- 7 Ibid Canon D2 para 3.
- 8 Ibid Canon D2 para 4.
- 9 Ibid Canon D1 para 1 (substituted by Canon promulgated 20th February 1973).
- 10 Ie duly authorised by ibid Canon B1 (substituted by Amending Canon No. 3): see PARA 937 post.
- 11 Ibid Canon D2 para 6 (amended by Amending Canon No. 3). The form and manner of making deaconesses was sanctioned by the Upper House of the Convocations of Canterbury and York on 11th July 1924.
- 12 Ibid Canon D2 para 5 (substituted by Amending Canon No. 4). The forms of declaration and oath are prescribed by Canon C15 para 1 (substituted by Amending Canon No. 4), and Canon D2 para 5 (substituted by Amending Canon No. 4). As to canonical obedience, see PARA 660 note 10 ante.
- 13 Ibid Canon D3 para 4.

UPDATE

760 Admission to order of deaconesses

TEXT AND NOTES--General Synod may provide by Canon that a woman must not be admitted to the order of deaconesses unless she had been accepted for training for admission to that order before 16 February 1987: Deacons (Ordination of Women) Measure 1986 s 2.

TEXT AND NOTE 1--Minimum age now 23: Canon D2 para 1; Amending Canon No 6.

TEXT AND NOTES 5, 6--Substitute '(4) testimony of her former good life and behaviour from persons specified by the bishop': Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(2) DEACONESSSES/761. Licensing of deaconesses.

761. Licensing of deaconesses.

No deaconess may exercise her office in any diocese until she has been licensed to do so by the diocesan bishop¹, although when any deaconess is to exercise her office temporarily in any diocese, the bishop's written permission is sufficient². Every deaconess who is to be licensed in any place must make and subscribe a declaration of assent and take an oath of canonical obedience³. Before so licensing a deaconess the bishop must satisfy himself that adequate provision has been made for her salary, her insurance against sickness or accident and a retirement pension⁴.

The names of all persons so licensed must be entered in a register kept by the diocesan bishop for that purpose⁵. There is no express provision for disciplinary proceedings against a deaconess⁶, but any licence to exercise her office may always be revoked⁷.

1 Revised Canons Ecclesiastical, Canon D3 para 1.

2 Ibid Canon D3 para 1 proviso.

3 Ibid Canon D3 para 2: see PARA 760 text to note 12 ante.

4 Ibid Canon D3 para 3. As to retirement pensions generally, see PARA 743 ante.

5 Ibid Canon D3 para 4.

6 See the Ecclesiastical Jurisdiction Measure 1963, ss 14, 17, which make provisions in relation to offences against ecclesiastical law, but which do not provide for the discipline of deaconesses.

UPDATE

761 Licensing of deaconesses

TEXT AND NOTES--General Synod now has power to make provision by canon with respect to the revocation by the bishop of licences granted to deaconesses and with respect to appeals from any such revocation: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(3) READERS/762.
The office of reader.

(3) READERS

762. The office of reader.

Any lay person, whether man or woman, who is baptised and confirmed and who satisfies the bishop that he or she is a regular communicant of the Church of England may be admitted by the bishop of the diocese to the office of reader¹ in the church and licensed by him to perform any duty or duties which may lawfully be performed by a reader according to the relevant provisions of the canons or which from time to time be so determined by Act of Synod². A pastoral scheme may provide for the employment of readers in any benefice³.

1 Before the Reformation a reader or 'lector' belonged to one of the five minor orders below that of deacon, but at the Reformation the office in England was allowed to lapse. Apart from a brief revival in the reign of Elizabeth I, the office in its present form dates from 1866, when it was re-established by resolution of the bishops. As to the re-establishment, see the Report of the Joint Committee of Convocations (1904), re-published under the title Readers and Sub-deacons (Central Readers Board 1962). The term 'lay reader', sometimes applied to a reader, is not correct. A reader was held not entitled to exemption from military service as 'a regular minister of a religious denomination' under the Military Service Act 1916 (repealed): *Simmonds v Elliott* [1917] 2 KB 894, DC.

2 Revised Canons Ecclesiastical, Canon E4 para 1 (amended by Amending Canon No. 1). As to the extent to which lay persons are bound by the canons, see PARA 308 ante. As to the duties, see PARA 763 post. As to the effect of Acts of Synod, see PARA 398 note 5 ante.

3 See the Pastoral Measure 1968, s 26 (c), and PARA 873 post.

UPDATE

762 The office of reader

TEXT AND NOTE 3--Repealed: Pastoral (Amendment) Measure 1982 s 19.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(3) READERS/763. Duties of readers.

763. Duties of readers.

The duties which may lawfully¹ be performed by a reader according to the canons are²:

(1) to visit the sick, to read and pray with them, to teach in Sunday school and elsewhere, and generally to undertake such pastoral and educational work and to give such assistance to any minister as the bishop may direct³; and

(2) during the time of divine service to read Morning and Evening Prayer⁴ (save for the absolution⁵), to publish banns of marriage at Morning or Evening Prayer (on occasions on which a layman is permitted by the statute law to do so, and in accordance with that law⁶), to read the Word of God, to preach, to catechize the children, to receive and present the offerings of the people and to give such further assistance as may be authorised under the canon dealing with the ministry of the Holy Communion⁷, namely, if specially authorised by the bishop acting under such regulations as the General Synod may make from time to time, to distribute the holy sacrament of the Lord's Supper to the people and, subject to the bishop's general directions, and at the invitation of the minister, to read the epistle and the Gospel at the celebration of the Holy Communion⁸.

The General Synod may by canon provide for the authorisation, by diocesan bishops, of readers to perform, at the invitation of the minister of a parish or an extra-parochial minister⁹, the duties of churching women, baptising in the minister's absence, and, with the goodwill of the persons responsible, burying the dead or reading the burial service before, at or after a cremation¹⁰.

Such, if any, of the readers whose names are on the roll of the parish as the annual parochial church meeting may determine are members of the parochial church council¹¹.

1 See PARA 762 ante.

2 Revised Canons Ecclesiastical, Canon E4 paras 1 (amended by Amending Canon No. 1), 2. See further the table of duties approved by both Houses of the Convocations of Canterbury and York on 23rd and 24th May 1939 and on 20th May 1940 respectively.

3 Revised Canons Ecclesiastical, Canon E4 para 2a.

4 See also the Book of Common Prayer, rubric headed 'The Order for Morning and Evening Prayer'.

5 If no priest is present the reader reads, in place of the absolution, the collect for the twenty-first Sunday after Trinity: Book of Common Prayer, Order for Morning Prayer and Order for Evening Prayer, rubric following the general confession; Prayer Book (Further Provisions) Measure 1968, s 1 (2) (repealed); Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 4. If a priest is present, the priest pronounces the absolution.

6 For the circumstances in which a layman may publish banns, see the Marriage Act 1949, s 9, and PARA 1018 post.

7 Ie under the Revised Canons Ecclesiastical, Canon B12 (amended by Amending Canon No. 1).

8 Ibid Canon B12 paras 3 (amended by Amending Canon No. 1), 4; Canon E4 para 2 b. As to the official dress of readers, see PARA 971 post.

9 For the meaning of 'extra-parochial minister', see PARA 759 note 10 ante.

10 Deaconesses and Lay Ministry Measure 1972, s 1 (1). At the date (1st June 1975) at which this volume states the law no such canon had been promulgated.

11 Church Representation Rules, r 12 (1) (d), contained in the Synodical Government Measure 1969, Sch. 3 (substituted by S.I. 1973 No. 1865): see PARA 569 ante.

UPDATE

763 Duties of readers

TEXT AND NOTE 10--See now Canon E4 para 2A; Amending Canon No 6, providing for authorisation of readers to bury the dead or read the burial service at a cremation. The General Synod may by canon empower the bishop of a diocese, in the case of a benefice in his diocese in respect of which a team ministry is established (1) to grant licences to readers to serve in the area of the benefice for a term of years specified in the licence, and (2) to revoke the licence summarily and without further process before the expiration of the specified term for such cause and subject to such conditions as the canon provides: Deaconesses and Lay Ministry Measure 1972 s 1A, added by the Team and Group Ministries Measure 1995 s 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(3) READERS/764. Admission to the office of reader.

764. Admission to the office of reader.

A candidate for the office of reader in a parish or district must be nominated to the bishop by the minister of that parish or district, and a candidate for the office in a wider area must be nominated by one of the rural deans or archdeacons, after consultation with the minister of his parish or district¹. The nominator must satisfy the bishop that the candidate is of good life, sound in faith, a regular communicant and well fitted for the work of reader, and must provide all such other information about the candidate and the duties which it is desired that he should perform as the bishop may require². No person may be admitted to the office unless it is found on examination held by the bishop, or competent persons appointed by him for the purpose, that he possesses a sufficient knowledge of Holy Scripture and of the doctrine and worship of the Church of England as set forth in the Book of Common Prayer, that he is able to read the services of the Church plainly, distinctly, audibly and reverently and that he is capable both of teaching and preaching³.

Admission is by delivery of the New Testament to the candidate by the bishop, without the imposition of hands⁴. Before being admitted the candidate must, in the presence of the bishop by whom he is to be so admitted or his commissary, make and subscribe a declaration of assent, a promise of canonical obedience and a promise to use only the forms of service authorised or allowed by canon⁵.

The bishop must give to the newly admitted reader a certificate of his admission to the office⁶. On the reader's moving on to another diocese the admission is not to be repeated⁶. The names of all persons admitted to the office must be entered in a register kept by the diocesan bishop for that purpose⁷.

1 Revised Canons Ecclesiastical, Canon E5 para 1. See also PARA 765 note 1 post. As to the meaning of 'district', see PARA 1055 note 3 post.

2 Ibid Canon E5 para 2.

3 Ibid Canon E5 para 3. The bishop normally delegates the examination to a diocesan readers board, which supervises, through tutors, the candidate's training.

4 Ibid Canon E5 para 5. An office for the Admission of Readers was approved by both Houses of the Convocations of Canterbury and York on 23rd and 24th May 1939 and on 20th May 1940, respectively.

5 Ibid Canon E5 para 4 (substituted by Amending Canon No. 4). The form of the declarations are prescribed by Canon C15 para 1 (substituted by Amending Canon No. 4), and Canon E5 para 4 (substituted by Amending Canon No. 4). See also the Church of England (Worship and Doctrine) Measure 1974, s 2 (1), and PARA 660 ante. As to canonical obedience, see PARA 660 note 10 ante.

6 Revised Canons Ecclesiastical, Canon E5 para 6.

7 Ibid Canon E4 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(3) READERS/765. Licensing of readers.

765. Licensing of readers.

No reader may exercise his office in any diocese until he has been licensed¹ by the bishop², although when any reader is to exercise his office temporarily in any diocese the bishop's written permission is sufficient³. Every reader to be licensed to exercise his office in any diocese must first, in the presence of the bishop by whom he is to be licensed, or of his commissary, make the prescribed declarations of assent and obedience⁴, and make and subscribe a declaration as to conduct⁵. No bishop may license a reader to be a stipendiary in any place until he has satisfied himself that adequate provision has been made for the stipend, for his insurance against sickness or accident and for a retirement pension⁶.

The names of all admitted or licensed readers must be entered in a register kept by the diocesan bishop for that purpose⁷. When required to do so by the bishop a reader must cease from the exercise of his functions and return his licence to the bishop for cancellation⁸.

1 A reader is usually licensed to serve in the diocese or a particular parish within the diocese, although it is not usual nowadays to grant a diocesan reader's licence. A pastoral scheme may provide in relation to any benefice for the employment of readers: Pastoral Measure 1968, s 26 (c).

2 Revised Canons Ecclesiastical, Canon E6 para 1.

3 Ibid Canon E6 para 1 proviso.

4 See ibid Canon E5 para 4 (substituted by Amending Canon No. 4), and PARA 764 ante.

5 Ibid Canon E6 para 2, where the form of declaration is prescribed.

6 Ibid Canon E6 para 4. At the present day there are, it seems, very few (if any) stipendiary readers.

7 Ibid Canon E4 para 3.

8 Ibid Canon E6 para 3.

UPDATE

765 Licensing of readers

TEXT AND NOTES--General Synod now has power to make provision by canon with respect to the revocation by the bishop of licences granted to readers and with respect to appeals from any such revocation: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(1).

NOTE 1--1968 Measure s 26(c) repealed: Pastoral (Amendment) Measure 1982 s 19.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(4) LICENSED LAY WORKERS AND OTHER LAY PERSONS/766. Licensed lay workers; laymen.

(4) LICENSED LAY WORKERS AND OTHER LAY PERSONS

766. Licensed lay workers; laymen.

The General Synod may by canon provide for the authorisation by diocesan bishops of licensed lay workers and other lay persons having such qualifications as may be prescribed by canon to perform, at the invitation of the minister of a parish or an extra-parochial minister¹, the duties of churching women, baptising in the minister's absence, and, with the goodwill of the persons responsible, burying the dead or reading the burial service before, at or after a cremation².

Provision is made in certain circumstances for the payment of pensions to and the provision of accommodation for retired church workers and their dependants³.

Whilst a lay person may not preach unless licensed to do so by the bishop⁴, he may, at the minister's invitation, read the epistle and Gospel at Holy Communion⁵ and he may be authorised by the bishop to distribute the sacrament of the Lord's Supper to the people⁶ and to read Morning or Evening Prayer, save for the absolution⁷. Without such authorisation he may read Morning or Evening Prayer, save for the absolution, in case of need where no clergyman, reader or lay person authorised by the bishop is available. Any stipendiary male lay worker licensed to the parish is a member of the parochial church council⁸.

1 For the meaning of 'extra-parochial minister', see PARA 759 note 10 ante.

2 Deaconesses and Lay Ministry Measure 1972, s 1 (1). At the date at which this volume states the law (1st May 1975) no such canon had been promulgated.

3 See PARA 752, text to notes 15, 16 ante (accommodation), and PARA 758 ante (pensions).

4 See PARA 946 post.

5 Revised Canons Ecclesiastical, Canon B12 para 4. This is expressed to be the subject to the general directions of the bishop.

6 Ibid Canon B12 para 3 (amended by Amending Canon No. 1).

7 Ibid Canon B11 para 4. It is for the minister or, failing him, the churchwardens to arrange for a suitable lay person to perform this duty: Canon B11 para 4.

8 Church Representation Rules, r 12 (1) (b), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 569 ante.

9 See PARA 308 ante. The General Synod may by canon make provision for assent or subscription by licensed lay workers to the doctrine of the Church of England: Church of England (Worship and Doctrine) Measure 1974, s 2 (1), (2). At the date at which this volume states the law (1st May 1975) it had not done so.

UPDATE

766 Licensed lay workers; laymen

TEXT--As to pensions for lay workers and their widows and dependants, see Deaconesses and Lay Workers (Pensions) Measure 1980 (see PARA 739A).

TEXT AND NOTE 2--See now Canons E7, E8; Canon promulgated 25 February 1976 (see PARA 767). The General Synod may by canon empower the bishop of a diocese, in the case

of a benefice in his diocese in respect of which a team ministry is established (1) to grant licences to licensed lay workers and other lay persons to serve in the area of the benefice for a term of years specified in the licence, and (2) to revoke the licence summarily and without further process before the expiration of the specified term for such cause and subject to such conditions as the canon provides: Deaconesses and Lay Ministry Measure 1972 s 1A, added by the Team and Group Ministries Measure 1995 s 13.

TEXT AND NOTE 8--Rule 12(1)(b) now refers to any lay worker licensed to the parish: SI 1984/1039.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/4. MINISTRY/(4) LICENSED LAY WORKERS AND OTHER LAY PERSONS/767. Women workers.

767. Women workers.

A woman who satisfies the bishop of the diocese that she is baptised, confirmed and a regular communicant of the Church of England, and possesses the necessary qualifications, may be commissioned by him as a woman worker of the church¹, whereupon he gives her a certificate of her commission². No woman who has been commissioned as a woman worker may serve as such in any diocese unless she has, in addition to the certificate of her commission, a licence to serve from the bishop³, although, when any woman worker is to serve temporarily in any diocese, the bishop's written permission is sufficient⁴. No bishop may commission or licence any woman worker unless he is satisfied that she is competent to carry out the duties⁵ which may be assigned to her⁶ and, if she is to be a stipendiary worker in any place, adequate provision has been made for her salary, insurance against sickness or accident and a retirement pension⁷. Every woman to be commissioned or licensed as a woman worker must, in the presence of the bishop by whom she is to be so commissioned or licensed, or of his commissary, make and subscribe declarations of assent and obedience⁸.

The names of all persons commissioned or licensed as women workers must be entered, together with details of the particular duties which they have been licensed to perform, in a register kept by the diocesan bishop for that purpose⁹. Any stipendiary woman worker licensed to the parish is a member of the parochial church council¹⁰.

1 Revised Canons Ecclesiastical, Canon E7 para 1.

2 Ibid Canon E7 para 2. The commission is not to be repeated if she moves to another diocese: Canon E7 para 2.

3 Ibid Canon E7 para 3.

4 Ibid Canon E7 para 3 proviso.

5 These duties may include those referred to in PARA 766 ante.

6 Revised Canons Ecclesiastical, Canon E7 para 4 a.

7 Ibid Canon E7 para 4 b.

8 Ibid Canon E7 para 5 (substituted by Amending Canon No. 4). The forms of declaration are prescribed by Canon C15 para 1 (substituted by Amending Canon No. 4), and Canon E7 para 5 (substituted by Amending Canon No. 4). As to canonical obedience, see PARA 660 note 10 ante.

9 Ibid Canon E7 para 6.

10 Church Representation Rules, r 12 (1) (b), contained in the Synodical Government Measure 1969, Sch. 3: see PARA 569 ante.

UPDATE

767 Women workers

TEXT AND NOTES--Canon E7 now as substituted by Canon promulgated 25 February 1976, as follows: a lay person (man or woman) who is baptised, has had proper training and possesses other necessary qualifications may be admitted by the bishop as a lay worker to perform the following duties if authorised by licence or permission by the

bishop¹: (1) under the minister's direction, to lead public worship, exercise pastoral care, evangelise, instruct people in the faith and prepare them to receive the sacraments²; (2) to say or sing Morning or Evening Prayer (save for the Absolution)³; (3) to distribute Communion and read the Epistle and Gospel⁴; (4) to preach⁵; (5) to church women⁶; (6) to bury the dead or read the burial service at a cremation, with the goodwill of the persons responsible⁷; (7) to publish banns of marriage⁸. A man or woman admitted to the office of evangelist is thereby admitted as a lay worker⁹.

Other provisions govern the admission and licensing of lay workers¹⁰.

1 Canon E7 para 1, substituted by Canon promulgated 25 February 1976.

2 Canon E7 para 3.

3 Canon E7 para 4(a).

4 Canon E7 para 4(b).

5 Canon E7 para 5(a).

6 Canon E7 para 5(b).

7 Canon E7 para 5(c).

8 Canon E7 para 5(d).

9 Canon E7 para 2.

10 Canon E8 added by Canon promulgated 25 February 1976. See also Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(1) (power of General Synod to make provision with respect to the revocation by the bishop of licences granted to lay workers and with respect to appeals from any such revocation). Rule 12(1)(b) now refers to any lay worker licensed to the parish: SI 1984/1039.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/768. Classification of benefices.

5. BENEFICES

(1) NATURE OF BENEFICES

768. Classification of benefices.

'Benefice'¹ has in common practice been confined to (1) rectories (or parsonages) with cure of souls²; (2) vicarages³; (3) perpetual curacies⁴; (4) chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and districts formed for ecclesiastical purposes under statutory authority⁵; (5) independent churches or chapels without districts⁶; and (6) sinecure rectories⁷.

Formerly charges on a benefice to secure the payment of money or for any other purpose were unlawful and void by statute⁸, but there is apparently no law now prohibiting an incumbent from charging his benefice⁹. An incumbent has certain powers of mortgaging his benefice which are discussed subsequently¹⁰.

1 As to the tenure of benefices, see PARA 689 ante. The term 'benefice' is defined in similar although not identical terms in different Acts and Measures. In the Pluralities Acts 1838 and 1850 'benefice' means benefice with cure of souls, and no other, and thus comprehends all parishes, perpetual curacies (see note 4 infra), donatives, endowed public chapels, parochial chapelries and chapelries or districts belonging or annexed or

reputed to belong or be annexed to any church or chapel: Pluralities Act 1838, s 124; Pluralities Act 1850, s 3. In the Benefices Act 1898, the Incumbents (Disability) Measure 1945 and the Ecclesiastical Jurisdiction Measure 1963 it includes all rectories with cure of souls, vicarages, perpetual curacies, endowed public chapels, parochial chapelries, chapelries or districts belonging or annexed or reputed to belong or be annexed to any church or chapel and districts formed for ecclesiastical purposes by virtue of statutory authority, including benefices in the patronage of the Crown or the Duchy of Cornwall, but does not extend to royal chapels, royal peculiars, cathedral or capitular preferments or dignities, chapels belonging to colleges, schools, hospitals, inns of court, asylums or public or charitable institutions or private chapels: Benefices Act 1898, s 13 (1); Incumbents (Disability) Measure 1945, s 1 (1); Ecclesiastical Jurisdiction Measure 1963, s 66 (1). In the Land Registration Act 1925 'benefice' includes all rectories with cure of souls, vicarages, perpetual curacies (see note 4 infra), donatives, endowed public chapels, parochial chapelries and chapelries or districts belonging or annexed to or reputed to belong or be annexed to any church or chapel: s 99 (4). In the Interpretation Measure 1925 and every Measure passed after 28th May 1925, unless the contrary appears, it means a benefice with cure of souls and no other, and comprehends all rectories and vicarages with cure of souls, perpetual curacies (see note 4 infra) and endowed public chapels, parochial chapelries and chapelries or districts belonging or annexed or reputed to belong or be annexed to any church or chapel: s 3. In the Pastoral Measure 1968 'benefice' means the office of rector or vicar of a parish or parishes with cure of souls but not including (except in s 88) the office of vicar in a team ministry, and 'the area of a benefice' means the parish or parishes belonging to a benefice: s 89 (1). Any question whether an ecclesiastical office is a benefice or whether any area is within a benefice is to be decided by the Church Commissioners after consultation with the bishop, and that determination is conclusive for the purposes of that Measure: s 89 (2). In the Tithe Act 1936 and the Queen Anne's Bounty (Powers) Measures 1937 and 1939 'benefice' means all rectories with cure of souls, vicarages, perpetual curacies (see note 4 infra), endowed public chapels, parochial chapelries, chapelries or districts belonging or annexed or reputed to belong or be annexed to any church or chapel and districts formed for ecclesiastical purposes by virtue of statutory authority, including benefices in the patronage of the Crown or the Duchy of Cornwall: Tithe Act 1936, s 47 (1); Queen Anne's Bounty (Powers) Measure 1937, s 1 (ii); Queen Anne's Bounty (Powers) Measure 1939, s 7.

'Benefice' was originally a lay term and was applied to grants of land made to soldiers or feudal vassals: Watson, *Clergyman's Law* (4th Edn) 1. In its wider sense it includes cathedral and capitular and other ecclesiastical dignities and preferments (3 Co Inst 155), as to which see PARA 636 et seq ante. An office is not rendered a spiritual or ecclesiastical benefice by the mere fact of its being tenable only by a person in holy orders. It is a spiritual or lay office according to the object for which it was established: *A-G v St Cross Hospital* (1853) 17 Beav 435 at 465, per Sir John Romilly.

2 See PARA 769 post.

3 See PARA 770 post.

4 As to the transformation of perpetual curacies into vicarages, see the Pastoral Measure 1968, s 87, and PARA 771 post.

5 See PARA 772 post.

6 See PARA 773 post.

7 See PARA 774 post.

8 See 13 Eliz. 1 c. 20 (Benefices) (1571) (repealed).

9 See *Metcalfe v Archbishop of York* (1836) 1 My & Cr 547.

10 See PARA 1146 et seq post.

UPDATE

768 Classification of benefices

NOTE 1--The Incumbents (Disability) Measure 1945 repealed. See now Incumbents (Vacation of Benefices) Measure 1977 s 19 (see PARA 733A.1). Pastoral Measure 1968 consolidated in Pastoral Measure 1983; see s 86(1), (2). Queen Anne's Bounty (Powers) Measures 1937 and 1939 repealed: Endowments and Glebe Measure 1976 Sch 8. Pluralities Act 1850 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

As to the meaning of 'benefice' in the Patronage (Benefices) Measure 1986, see *ibid* s 39(1) (see *PARA 783A.1*).

Land Registration Act 1925 repealed and replaced by the Land Registration Act 2002; see *LAND REGISTRATION*.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/769. Rectories.

769. Rectories.

Where the whole of the tithe and glebe land of a parish has been always attached to the benefice for the maintenance of the minister, the benefice is a rectory or parsonage with cure (or care) of souls¹. Other benefices have at different times been made rectories by statute².

Where a pastoral scheme³ provides for the union of two or more benefices, one of which is a rectory, or for the dissolution of a rectory in any other way, the new benefice created by the union, or the benefice in whose area is situated the residence of the rector of the dissolved rectory, is a rectory⁴. Every other new benefice created by a pastoral scheme is a vicarage, except in the case of a benefice for which a team ministry is established⁵.

1 Spelman, *De Non Temerandis Ecclesiis* 1. A rectory must have some land belonging to it, but the church and churchyard are sufficient: *Berry v Wheeler* (1662) 1 Sid 91. In *Boulton v Richards and Booth* (1819) 6 Price 483 the existence of an ecclesiastical rectory was held to have been proved even though there was no church or burying ground, but only a room in a mansion house fitted up as a chapel in which divine service was performed and marriages and baptisms were solemnised. A rectory may be attached to part of a church: *Fowke v Berington* [1914] 2 Ch 308. As to the meaning of 'minister', see PARA 654 note 1 ante.

2 See eg the Parish of Manchester Division Act 1850, s 2, but cf. the Somersham Rectory Act 1882, by which a vicarage was created. A distinct and separate parish formed under the Church Building Act 1818 (repealed by the New Parishes Measure 1943, s 32, but with a saving by s 8 (now itself repealed by the Pastoral Measure 1968, s 95, Sch. 9) as to the status of certain ecclesiastical districts), was a rectory, vicarage or perpetual curacy, according to the nature of the parish out of which it was formed: Church Building Act 1818, s 19 (repealed). Where the owner of an impropriate rectory or the patron and incumbent of a sinecure rectory surrender the tithe, glebe and other rectorial emoluments, or the tithe with or without a portion of the glebe, to the incumbent of a vicarage in perpetuity, the Church Commissioners (as the successors of the Church Building Commissioners: see PARA 537 ante) are authorised and directed to convert the benefice into a rectory: Church Building Act 1822, s 13. Upon the suppression of the sinecure rectory of a parish under the Ecclesiastical Commissioners Act 1840, s 48, its emoluments could, by Order in Council ratifying the commissioners' scheme, be annexed to the vicarage or perpetual curacy of the parish, which then became a rectory: s 55.

3 As to pastoral schemes, see PARA 856 et seq post.

4 Pastoral Measure 1968, s 22 (1). See also note 5 infra.

5 Ibid s 22 (2). Any question arising under s 22 (1) or s 22 (2), as to whether a benefice is or was a rectory, is determined by the Church Commissioners: s 22 (3). The rector or vicar of a new benefice created by a pastoral scheme has the exclusive cure of souls in the area of the benefice, subject to the bishop's rights and, if a team or group ministry is created, to the rights and duties of the other members of the team or group, and accordingly has all the rights and duties appertaining to a benefice with cure of souls, and is a corporation sole: s 22 (4). As to team and group ministries, see PARA 870 et seq post.

UPDATE

769 Rectories

NOTE 2--1840 Act s 48 repealed: Patronage (Benefices) Measure 1986 Sch 5.

TEXT AND NOTE 4--Now where a pastoral scheme provides for the union of two or more benefices one of which is a rectory, the new benefice created by the union is a rectory: Pastoral Measure 1983 s 23(1). Where a pastoral scheme provides for the dissolution of a rectory, otherwise than as a result of a union of benefices, any new benefice created in consequence of the dissolution is, if the scheme so provides, a rectory: s 23(2).

NOTE 5--Now *ibid* s 23(3), (4), (5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/770. Vicarages.

770. Vicarages.

Before the Reformation the rectory, with its emoluments¹, was frequently appropriated to or by a religious house or collegiate church or some other religious corporation which, as such, could not perform the personal services required in a cure of souls and consequently put in its place a vicar, hence the name². In such cases provision was made by ecclesiastical constitutions or ordinances and afterwards by statute³ for his endowment in perpetuity, and where the benefice thus remains annexed to the perpetual use of some spiritual corporation, either sole or aggregate, the benefice is said to be appropriated and the appropriators are recognised as the parson or rector of the parish.

Upon the dissolution of the monasteries many of these rectories came into the hands of laymen and are in that case strictly called impropriate⁴ and the lay rectors are said to be the impropriators, but, as before, a vicar was still required for the cure of souls⁵.

The rector, whether spiritual or lay, has the freehold of the church and churchyard⁶, but where the rector is not the incumbent he has no control over the cure of souls or the performance of ministerial duties in the parish⁷, and where there is a lay rector the vicar has the corporal possession of the church and churchyard for the use of the parishioners⁸.

The incumbent of every parish who is not a rector but is authorised to solemnise marriages, churchings and baptisms and who is entitled to receive for his own use the entire fees for the performance of those offices is, for the purpose of style and designation only, deemed and styled the vicar, and his benefice the vicarage, of the parish⁹. Since 1st April 1969 a person holding a perpetual curacy or any other benefice comprising a parish or parishes with full parochial status, not being a rectory or a vicarage, is in fact a vicar¹⁰.

1 le the glebe and tithe and other dues: see PARAS 1139, 1209 post.

2 'Vicar' is derived from the Latin 'vicarius', a substitute.

3 15 Ric. 2 c. 6 (Appropriation of Benefices etc.) (1391); 4 Hen. 4 c. 12 (Appropriation of Benefices) (1402) (both repealed).

4 The terms 'appropriate' are, 'impropriate' are, however, frequently used interchangeably: Ayl Par 86-90, 509-513; *Duke of Portland v Bingham* (1792) 1 Hag Con 157 at 163-165, per Sir W. Scott.

5 4 Burn's Ecclesiastical Law (4th Edn) 9; and see *Smith v Waller* (1700) 3 Salk 378; *Fowke v Berington* [1914] 2 Ch 308. A vicarage may be reunited to the rectory or parsonage where this is in spiritual hands, but not when it is in lay hands: *Robinson v Bedel* (1602) Cro Eliz 873; *Britton v Wade* (1620) Cro Jac 515; Watson, Clergyman's Law (4th Edn) 198-202b. If a parson who is patron of the vicarage presents a clergyman to the church by the name of the parsonage or rectory and not of the vicarage, this will disappropriate the parsonage and make the benefice a parsonage or rectory in future: *The Queen and Lord Lumley's Case* (1584) 2 Leon 80; Watson, Clergyman's Law (4th Edn) 199, 200.

6 *Jones v Ellis* (1828) 2 Y & J 265 at 275. As to the rector's duty of repair, see PARA 1096 post.

7 *Herbert v Dean and Chapter of Westminster* (1721) 1 P Wms 773; *A-G v Brereton* (1752) 2 Ves Sen 425 at 429; *Duke of Portland v Bingham* (1792) 1 Hag Con 157.

8 *Griffin v Dighton* (1864) 5 B & S 93 at 108, Ex Ch. As to the vicar's tenure, see PARA 689 ante.

9 Incumbents Act 1868, s 2.

10 Pastoral Measure 1968, s 87: see PARA 771 post. See also s 22 (2), and PARA 769 ante.

UPDATE

770 Vicarages

NOTE 9--Repealed: Statute Law (Repeals) Act 1977.

TEXT AND NOTE 10--1968 Measure s 87 not reproduced in Pastoral Measure 1983. 1968 Measure s 22(2) now 1983 Measure s 23(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/771. Perpetual curacies.

771. Perpetual curacies.

Where the rectory of parish was appropriate or inappropriate and there had been no endowment of a vicarage, the benefice was a perpetual curacy¹ and the appropriator or impropriator was bound to nominate a curate to serve the parish, and had no power to remove him after he had been licensed by the bishop; the curate was therefore called 'a perpetual curate'². A perpetual curate had a freehold interest in the buildings and land belonging to the curacy, and held them to himself and his successor as a corporation sole³. He also had the rights of a minister in respect of the appointment of churchwardens⁴.

On 1st April 1969⁵ all perpetual curacies and any other benefices which immediately before that date comprised a parish or parishes with full parochial status, but were not vicarages or rectories, became vicarages, and a person holding a perpetual curacy or any such benefice immediately before that date became the vicar without any further process or form of law⁶.

1 *Arthington v Bishop of Chester* (1790) 1 Hy Bl 418.

2 Gib Cod 819; *Duke of Portland v Bingham* (1792) 1 Hag Con 157 at 166; *Greenslade v Darby* (1868) LR 3 QB 421 at 430. Perpetual curates held office for life, unless deprived by the Ordinary: *A-G v Brereton* (1752) 2 Ves Sen 425 at 429. A perpetual curacy was not necessarily a separate and distinct cure of souls: see PARA 689 note 2 ante.

3 *Mason v Lambert* (1848) 12 QB 795; *Wallis v Birks* (1870) LR 5 CP 222. He had sufficient possession of the ruins of the parish church if they in fact formed part of it, to enable him to sue for possession of and rights over them for the spiritual purposes of his cure: *Fowke v Berington* [1914] 2 Ch 308. See also Queen Anne's Bounty Act 1714, s 4.

4 Churchwardens (Appointment and Resignation) Measure 1964, ss 2, 13; Church of England Assembly (Powers) Act 1919, Schedule, r 1 (1) (repealed).

5 I.e. the date on which the Pastoral Measure 1968 came into force: s 96 (3); London Gazette, 7th February 1969.

6 Pastoral Measure 1968, s 87. As to the use, before 1st April 1969, of the style 'vicar' and 'vicarage'; for a perpetual curate and a perpetual curacy, see PARA 770 text and note 9 ante.

UPDATE

771 Perpetual curacies

TEXT AND NOTES 5, 6--This provision not reproduced in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/772. Chapels with districts or chapelries attached.

772. Chapels with districts or chapelries attached.

Where a chapel has from time immemorial had a district or chapelry attached to it, whose inhabitants have had rights of baptism and burial and other spiritual services in the chapel and not in the parish church, and fees and dues for these services have been received by the minister of the chapel as of right and custom, the chapelry is called a parochial chapelry, and was formerly a perpetual curacy whether there was an endowment attached to it or not¹. It is now a vicarage².

¹ *A-G v Brereton* (1752) 2 Ves Sen 425; *R v Blooer* (1760) 2 Burr 1043; *Dent v Rob* (1834) 1 Y & C Ex 1; *Carr v Mostyn* (1850) 5 Exch 69. As to chapels, see PARA 1225 et seq post.

² See the Pastoral Measure 1968, s 87, and PARA 771 ante.

UPDATE

772 Chapels with districts or chapelries attached

NOTE 2--Not reproduced in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/773. Churches or chapels without districts.

773. Churches or chapels without districts.

A church or chapel without a district may in some cases be a benefice independent of the incumbent of the parish in which it is situate¹.

¹ All churches, curacies or chapels augmented by Queen Anne's Bounty, now the general fund of the Church Commissioners (Church Commissioners Measure 1947, s 18 (2): see PARA 376 ante, 1234 post), become thereupon perpetual cures and benefices, and their ministers are corporations sole: Queen Anne's Bounty Act 1714, s 4; *R v Bishop of Chester* (1786) 1 Term Rep 396. The cure of souls in the parishes in which they are situate remains, however, in the incumbents of the parish churches: Queen Anne's Bounty Act 1714, s 5. The right of nomination of the ministers is subject to lapse and is recoverable by legal proceedings, and the incumbency is liable to be terminated in the same manner as in the case of presentative benefices: s 6.

UPDATE

773 Churches or chapels without districts

NOTE 1--1714 Act s 6 repealed in so far as it provides that the right of nomination of the ministers is subject to lapse: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/774. Sinecure rectories.

774. Sinecure rectories.

In some parishes the rector acquired the right to obtain institution both of himself and a vicar to the church and benefice, so that both together had the cure of souls and the duty of officiating¹. In course of time, however, these functions were left to the vicar alone and the rectory became a sinecure². A pastoral scheme³ may provide for merging with a benefice any sinecure rectory or any office of minister of a church or chapel without cure of souls, and make further provision for any related matters⁴. In particular, provision may be made for the vesting of any such church or chapel and its use either as a parish church or chapel of ease, or for declaring it redundant⁵, or for the transfer, vesting or disposal of rights of patronage, endowments or other property relating or belonging to the rectory on such terms as the scheme may provide⁶.

1 *Britton v Wade* (1620) Cro Jac 515 at 518; *Clarke v Pryn* (1669) 1 Mod Rep 11; *Greening v Queen Anne's Bounty* [1932] 1 Ch 348 at 357.

2 Gib Cod 719. In certain circumstances sinecure rectories may be suppressed, or united or deemed to be united with the vicarage: Ecclesiastical Commissioners Act 1840, ss 48, 54, 55.

3 As to pastoral schemes, see PARA 856 et seq post.

4 Pastoral Measure 1968, s 34.

5 Ibid s 34 (a).

6 Ibid s 34 (b).

UPDATE

774 Sinecure rectories

NOTE 2--Section 48 (suppression of sinecure rectories) repealed: Patronage (Benefices) Measure 1986 Sch 5. 1840 Act s 55 amended: Endowments and Glebe Measure 1976 Sch 8.

NOTES 4-6--Consolidated in Pastoral Measure 1983; see s 34.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(1) NATURE OF BENEFICES/775. Medieties.

775. Medieties.

There may be two or more benefices in the same church and parish held by different incumbents¹, in which case each benefice or portion of the whole benefice is called a mediety². The bishop, after a formal inquiry, may apportion the spiritual duties of the parish between the several incumbents³.

1 *Stoughton v Palmer* (1639) W Jo 446.

2 *Welch v Bishop of Peterborough* (1885) 15 QBD 432.

3 Spiritual Duties Act 1839, s 1.

UPDATE

775 Medieties

NOTE 3--Repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/776. Advowsons.

(2) PATRONAGE

(i) Advowsons and Rights of Patronage

A. NATURE OF RIGHTS

776. Advowsons.

The initial right of a clergyman to hold a church and benefice is acquired by presentation or, if the benefice is in the gift of the bishop of the diocese in which it is situate, by collation¹. The right to fill a church and benefice by presentation or collation is called an advowson or right of patronage, and the owner of it is called the patron².

An advowson is an incorporeal hereditament³. It will pass under a conveyance or demise of hereditaments⁴ or tenements⁵ or real estate⁶, but not under a conveyance or demise of land⁷. On the death of the owner it is an asset for payment of his debts⁸. An advowson may be either appendant or in gross⁹.

The advowson of a rectory is normally appendant to a manor, but may become appendant to some house or land formerly belonging to the manor by the alienation of that house or land with the advowson apart from the manor or the alienation of the rest of the manor apart from the house or land and the advowson¹⁰. The advowson of a vicarage is normally appendant to the rectory out of which it is extracted, but may be severed from it and may be appendant to a manor¹¹. An advowson appendant passes by assurance¹² or by devolution of law¹³ with the manor or other hereditament to which it is appendant¹⁴.

The statutory prohibition of a sale by public auction of any right of patronage¹⁵ does not apply where the advowson is sold in conjunction with a manor¹⁶; and the provision by which patronage rights are made incapable of sale after two vacancies in the benefice since 14th July 1924¹⁷ does not apply to sales of land to which rights of patronage are appendant¹⁸. The powers which are conferred upon parochial church councils of purchasing compulsorily certain rights of patronage¹⁹ do not extend to a right of patronage sold on the occasion of the last transfer in conjunction with any manor or with an estate of not less than 100 acres situate in the parish in which the benefice is situate, or in an adjoining parish, and belonging to the same owner as the right of patronage²⁰. If an advowson appendant is severed from the manor or other hereditament to which it is appendant, as is possible, it becomes an advowson in gross, if the severance is complete, and cannot again be made appendant²¹ except by operation of law²². Where a benefice is held in mediety²³ there may be an advowson of each mediety²⁴.

1 Co Litt 119b, where it is stated that every church is either presentative, collative, donative or elective. Before 1st January 1899 certain churches and benefices were donative and were filled by a donation to a clergyman by the patron without recourse to the bishop (Co Litt 344a; 2 Bl Com (14th Edn) 22, 23); but they have since all become presentative: Benefices Act 1898, s 12. In the case of elective churches the elected clergyman is presented to the bishop: *A-G v Rutter* (1768) 2 Russ 101n at 104n; *Faulkner v Elger* (1825) 4 B & C 449 at 450; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 104; *Carter v Cropley* (1857) 8 De GM & G 680 at 690.

2 Co Litt 119b. The advocatio or jus patronatus of a church was first acquired by the founders, benefactors or maintainers of the church, who were called advocati or patroni: Co Litt 119b; 2 Bl Com (14th Edn) 21; Watson, *Clergyman's Law* (4th Edn) 57-59. A patron as such has no control over the cure of souls or the performance of ministerial duties in the parish: *Herbert v Dean and Chapter of Westminster* (1721) 1 P Wms

773; *Duke of Portland v Bingham* (1792) 1 Hag Con 157. As to the patronage of guild churches, see PARA 600 ante. As to jus patronatus, see further PARAS 824, 1347 post.

3 2 Bl Com (14th Edn) 21; *Pannell v Hodgson* (1576) Cary 52; *Earl of Stafford v Buckley* (1750) 2 Ves Sen 170 at 178; *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 317, HL, per Lord Lyndhurst.

4 *Anon* (1573) 3 Dyer 323 b; *London v Chapter of Southwell Collegiate Church* (1618) Hob 303; *Earl of Albemarle v Rogers* (1796) 7 Bro Parl Cas 522, HL.

5 *London v Chapter of Southwell Collegiate Church* (1618) Hob 303; *Gully v Bishop of Exeter* (1827) 4 Bing 290 at 295, 296.

6 *Re Hodgson, Taylor v Hodgson* [1898] 2 Ch 545.

7 *Westfaling v Westfaling* (1746) 3 Atk 460 at 464. An advowson is not 'land' within the definition in the Limitation Act 1939, s 31 (1), which excludes incorporeal hereditaments (see LIMITATION PERIODS vol 68 (2008) PARA 1018, and *Brooks v Muckleston* [1909] 2 Ch 519 at 522, where the property was an advowson in gross), but is included in the definition of 'land' in the Law of Property Act 1925, s 205 (1) (ix). Whether it will pass under a conveyance or devise of hereditaments, tenements or real estate, situate and being in the parish or county in which the church and benefice are situate depends upon circumstances: *Anon* (1573) 3 Dyer 323 b; *London v Chapter of Southwell Collegiate Church* (1618) Hob 303; *Kensey v Langham* (1735) Cas temp Talb 143; *Crompton v Jarratt* (1885) 30 ChD 298, CA; *Re Hodgson, Taylor v Hodgson* [1898] 2 Ch 545. It will pass by the word 'church' (*Ashegells and Dennis Case* (1589) 1 Leon 191, per Walmesley J; Co Litt 17b), or by the word 'living', though this word may mean only a single presentation (*Webb v Byng* (1856) 2 K & J 669). However, it does not pass under the words 'commodities, emoluments, profits and advantages' (*London v Chapter of Southwell Collegiate Church* supra); and where a testator, who was both patron and incumbent of a benefice, devised the advowson of the benefice and other real estate upon trust to apply the rents as income according to his will, his heir-at-law was held entitled to present on the vacancy occasioned by his death (*Martin v Martin* (1842) 12 Sim 579). Where two benefices have been united the advowson of the united benefice does not pass by the name of the advowson of one of them (*Robinson v Marquis of Bristol* (1852) 11 CB 241, Ex Ch), but this is not so where there is only one patron (*Lord Elcho v Andrews* [1910] 1 Ch 706, CA).

8 *London v Chapter of Southwell Collegiate Church* (1618) Hob 303 at 303, 304; *Tong v Robinson* (1730) 1 Bro Parl Cas 114, HL; *Westfaling v Westfaling* (1746) 3 Atk 460. A right of patronage, however, becomes incapable of sale after the occurrence of two vacancies after 14th July 1924: see PARA 804 post.

9 *Tyrringham's Case* (1584) 4 Co Rep 36b; *Watson, Clergyman's Law* (4th Edn) 59.

10 *Watson, Clergyman's Law* (4th Edn) 60, 61.

11 *Watson, Clergyman's Law* (4th Edn) 61, 62; *Hill v Grange* (1555) 1 Plowd 164 at 174; *Case of Assize* (1576) 3 Dyer 350b; *R v Bishop of Norwich, Cole and Saker* (1615) Cro Jac 385; *Sherley v Underhill and Bursey* (1618) Moore KB 894; *Reynoldson v Blake* (1697) 1 Ld Raym 192 at 200; but see *Lord Elcho v Andrews* [1901] 1 Ch 706, CA.

12 Co Litt 307a; *A-G v Sitwell* (1835) 1 Y & C Ex 559 at 582, 583; *A-G v Ewelme Hospital* (1853) 17 Beav 366 at 386, per Romilly MR; *Rooper v Harrison* (1855) 2 K & J 86.

13 Law of Property Act 1925, s 62 (3). As to the grant of a manor in cases where the Act does not apply, see *Higgins v Grant* (1583) Cro Eliz 18.

14 A grant by the Crown of a manor or land with the appurtenances does not, however, carry an appendant advowson unless mentioned expressly (Prerogativa Regis (temp. incert.) c. 17; *A-G v Sitwell* (1835) 1 Y & C Ex 559) or by reference (*Whistler's Case* (1613) 10 Co Rep 63 a; 1 Burn's Ecclesiastical Law (4th Edn) 9). See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 860.

15 See the Benefices Act 1898, s 1 (2), and PARA 802 post.

16 Ibid s 1 (2).

17 See the Benefices Act 1898 (Amendment) Measure 1923, s 1, and PARA 804 post.

18 Ibid s 1 proviso.

19 See the Benefices (Purchase of Rights of Patronage) Measure 1933, s 2, and PARA 805 post.

20 Ibid s 9 (iii).

21 2 Bl Com (14th Edn) 22; Watson, *Clergyman's Law* (4th Edn) 62; *Reynoldson v Blake* (1697) 1 Ld Raym 192 at 198. If the appendancy was severed during an estate for life or other particular estate, or for a term of years, the advowson might become again appendant on the determination of the estate or term of years: Mallory, *Quare Impedit*, Part I, p. 39; *Hartopp and Cock's Case* (1627) Hut 88 at 89; *Rooper v Harrison* (1855) 2 K & J 86. If the manor is mortgaged in fee, excepting the advowson, and the mortgage is paid off on the appointed day the advowson becomes again appendant, but if repayment is not made until afterwards the advowson will be reputed appendant but will not in fact be so: *R v Bishop of Chester* (1696) 1 Ld Raym 292 at 301.

22 *Bishop of Meath v Marquis of Winchester* (1836) 4 Cl & Fin 445 at 551, HL. See also *Finch's Case* (1606) 6 Co Rep 63a at 64a.

23 See PARA 775 ante.

24 Co Litt 17b, 18a; *Smith's Case* (1614) 10 Co Rep 135b.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

776 Advowsons

TEXT--An advowson is no longer registrable in the register of title to freehold and leasehold land at the Land Registry; all titles to advowsons registered in that register are deemed to have been closed and removed from the register: Patronage (Benefices) Measure 1986 ss 1(2), 6(1).

NOTE 1--Benefices Act 1898 s 12 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

NOTE 7--1939 Act consolidated in Limitation Act 1980; see s 38(1).

TEXT AND NOTES 10-14--Every advowson which immediately before 1 January 1989 is appendant to any land or any manor is severed from that land or manor and becomes an advowson in gross which (a) in the case of land belonging at that date to a charity, belongs to that charity; (b) in any other case, belongs in his personal capacity to the person who at that date is the owner in fee simple of that land or the lord of that manor: 1986 Measure s 32(1). Every advowson which immediately before 1 January 1989 was appendant to any rectory, not being a rectory with cure of souls, is severed from that rectory and becomes an advowson in gross belonging in his personal capacity to the person who at that date is the rector of that rectory: s 32(2). Nothing in s 32 affects the trusts, if any, on which any advowson is held: s 32(3).

TEXT AND NOTES 15-20--Repealed: *ibid* Sch 5. As to the transfer of rights of patronage, see now s 3 (see PARA 802A). As to the transfer of advowsons held on trust for sale or comprised in settled land, see s 33 (see PARA 802B).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/777. Right of nomination.

777. Right of nomination.

The right of presentation or legal patronage may be vested in one person and the right of nomination in another, in which case the legal patron is trustee for the person who has the right of nomination and is bound to present to the bishop that person's nominee¹.

¹ Gib Cod 794; Watson, Clergyman's Law (4th Edn) 85, 86. The nomination is the substance of the advowson, and the presentation is only a ministerial interest: *Sherley v Underhill and Bursey* (1618) Moore KB 894. An agreement for an exercise of the right of patronage of a benefice on the nomination of a particular person is invalid (Benefices Act 1898, s 1 (3)), but nothing in s 1 prevents the reservation or limitation in a family settlement of a life interest to the settlor: s 1 (7); Benefices Act 1898 (Amendment) Measure 1923, s 4. As to where the advowson is held in trust, see PARAS 780, 799, 800 post. As to the remedy of the person entitled to nominate in case of the non-presentation of his nominee, see PARAS 822, 823 post; but where, as in Queen Anne's Bounty Act 1714, s 6, the legal patron is mentioned as having the nomination and the right to nominate to the bishop, the words have the same meaning or the same effect as 'presentation' and 'present'. Municipal corporations cannot hold advowsons or rights of nomination: see the Municipal Corporations Act 1882, ss 121, 122 (repealed).

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

777 Right of nomination

NOTE 1--1898 Act s 1 and 1714 Act s 6 (part) repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/778. Patronage of vicarages.

778. Patronage of vicarages.

The right of presentation to a vicarage¹ is ordinarily in the rector or parson², but it may be appendant to a manor³ or have become vested in other hands or in the parishioners⁴.

1 See PARA 770 ante.

2 Gib Cod 719; 2 Roll Abr 336; *Sherley v Underhill and Bursey* (1618) Moore KB 894; *Code v Hulmed* (1623) 2 Roll Rep 304.

3 2 Roll Abr 336; *Sherley v Underhill and Bursey* (1618) Moore KB 894.

4 *Code v Hulmed* (1623) 2 Roll Rep 304. See PARA 797 post.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/779. Patronage of co-owners.

779. Patronage of co-owners.

Generally, where the advowson or right of patronage of a benefice is vested in two or more persons¹ with the right to present jointly, the bishop may accept the presentation of one², but is not bound to act on a presentation in which they do not all concur; he may require a presentation by all and if they do not agree to make a joint presentation within the allowed period of six months he may collate by right of lapse³. If, however, he admits a clergyman to the benefice on a presentation in which they do not all concur, their common title is not disturbed⁴, for the advowson is one entire thing and is not in its nature severable⁵.

A right of patronage may be exercisable by several patrons in turn⁶, and the patronage of a new or consolidated benefice may be originally vested in several patrons in turn⁷. If one of several part-patrons presents out of his or her turn and the presentee is instituted or admitted the presentation is a usurpation, and the patron entitled to the turn loses it for that turn although the cycle of turns is not altered⁸. The turn is complete when the presentee is instituted or admitted, so, if he is rejected by the bishop or if his institution or admission is ipso facto void, the same part-patron may present again; but if he is afterwards deprived or his institution or admission is adjudged null and void by a declaratory sentence the turn is gone and the part-patron next in turn has the presentation⁹. The turn is lost if the part-patron allows his right of presentation to lapse to the bishop¹⁰ or if he allows his right to be usurped by a stranger and does not vindicate it by quare impedit¹¹; but where, on the appointment of the incumbent to a bishopric, the Queen presents by royal prerogative¹² this presentation does not count as a turn¹³.

1 A tenancy in common of an advowson can subsist only in equity: Law of Property Act 1925, ss 1 (6), 205 (1) (ix). Where an advowson is vested in persons as joint tenants no severance of the legal estate is possible so as to create a tenancy in common: s 36 (2); see REAL PROPERTY vol 39(2) (Reissue) PARA 198.

2 *Fuliambe's Case* (1539) Moore KB 4.

3 Co Litt 186b; Gib Cod 794; Watson, Clergyman's Law (4th Edn) 226, 227. As to lapse, see PARA 826 et seq post.

4 Co Litt 186b, 243 a; 2 Co Inst 365; 1 Burn's Ecclesiastical Law (4th Edn) 14a-18; *Wilson v Dennison* (1750) Amb 82 at 83. Trustee patrons must all join in a presentation (*Wilson v Dennison supra*) unless otherwise provided in their instrument of trust: see PARA 800 post. Where several beneficiaries have the right of nomination they must all join in exercising it: *Seymour v Bennet* (1742) 2 Atk 482 at 483.

5 *Barker v Bishop of London* (1752) 1 Hy Bl 412n at 417n.

6 *Dolmans Case* (1583) 4 Leon 86.

7 *Grocers' Co v Archbishop of Canterbury* (1771) 3 Wils 214 at 221; *Keen v Denny* [1894] 3 Ch 169; *Lord Elcho v Andrews* [1910] 1 Ch 706, CA. As to patronage generally, see also the Pastoral Measure 1968, s 32, and PARA 868 post.

8 *Dolmans Case* (1583) 4 Leon 86; *Birch v Bishop of Litchfield* (1803) 3 Bos & P 444; *Richards v Earl of Macclesfield* (1835) 7 Sim 257; *Keen v Denny* [1894] 3 Ch 169.

9 *Windsor's Case* (1599) 5 Co Rep 102 a.

10 2 Bro Abr 149 b, 150 a, Presentation, pl 26; 17 Vin Abr, Presentation (Ka) pl 7; *Keen v Denny* [1894] 3 Ch 169 at 177. As to lapse, see PARA 826 et seq post.

11 *Leak v Bishop of Coventry and Babington* (1601) Cro Eliz 811. As to quare impedit, see further PARA 822 post.

12 See PARA 784 post.

13 *Grocers' Co v Archbishop of Canterbury* (1771) 3 Wils 214 at 221, 232; *Troward v Calland* (1796) 8 Bro Parl Cas 71, HL; *Keen v Denny* [1894] 3 Ch 169 at 175, per Chitty J.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/780. Patrons with limited interests.

780. Patrons with limited interests.

Where the legal estate in an advowson is vested in trustees they are bound to present the nominee of the person or persons equitably interested in it¹. The person beneficially interested in an estate for life or other limited estate in the advowson of a benefice has the right of presentation or nomination when a vacancy in the benefice occurs during the continuance of that estate².

¹ 1 Burn's Ecclesiastical Law (4th Edn) 14. Where the advowson of a benefice is devised upon trust for sale, and the proceeds of sale and the income arising from it are to be applied for the benefit of a person or persons named in the will, and the benefice becomes vacant before the advowson is sold, the right of presentation or nomination is in the person or persons who, if the sale had taken place, would for the time being be beneficially interested in the proceeds of the sale or the income of it: *Hawkins v Chappel* (1739) 1 Atk 621; *Johnstone v Baber* (1856) 6 De GM & G 439; *Briggs v Sharp* (1875) LR 20 Eq 317. The same rule would apply where the advowson is held upon trust for sale under the Law of Property Act 1925: see ss 34, 36, Sch. 1, Part IV; Law of Property (Amendment) Act 1926, s 7, Schedule; and REAL PROPERTY. Where a testator devised an advowson to trustees upon trust to sell immediately after the death of the then incumbent, however, it was held that they would have the presentation on the vacancy occasioned by that death: *Bristow v Skirrow* (No. 2) (1859) 5 Jur NS 1379.

² *Earl of Albemarle v Rogers* (1794) 2 Ves 477; *Briggs v Sharp* (1875) LR 20 Eq 317; *Welch v Bishop of Peterborough* (1885) 15 QBD 432.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/781. Patron under disability.

781. Patron under disability.

Where a minor¹ is beneficially entitled to the patronage of a vacant benefice the presentation is to be made by the trustees². When the patron of a benefice is a patient³, the Lord Chancellor has the right of presenting to it⁴. Where by statute⁵ the consent of a patron who is under a disability is required it may be given by his guardian, in the case of a minor⁶, or by the Lord Chancellor, who alone may exercise the powers of a patron on behalf of a patient⁷.

If as a result of a censure against him a person is suspended or inhibited⁸ from carrying out all or any of the duties attaching to his preferment, any right of patronage he has by virtue of his preferment vests in the person entitled to appoint to the preferment, during the period of the suspension or inhibition⁹.

1 le a person under the age of eighteen years: Family Law Reform Act 1969, s 1: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 1.

2 An advowson is included in the definition of 'land' in the Law of Property Act 1925, s 205 (1) (ix), and the legal estate vests not in the minor but in trustees: ss 1 (6), 19, 201 (2), Sch. 1, Part III.

3 For the meaning of 'patient', see the Mental Health Act 1959, s 101.

4 Ibid s 103 (1) (j). For the position if the Lord Chancellor is a Roman Catholic, see PARA 786 post.

5 Eg under the Acts and Measures cited in note 6 infra.

6 Pluralities Act 1838, s 127; Pastoral Measure 1968, s 82; Repair of Benefice Buildings Measure 1972, s 27 (2).

7 Pluralities Act 1838, s 127; Mental Treatment Act 1930, s 20 (5); Mental Health Act 1959, ss 103 (1) (j), 149 (5). The Pluralities Act 1838, s 127, is no longer of effect with regard to persons to whom the Mental Health Act 1959, Part VIII (ss. 100-121), applies: s 121, Sch. 5. See also note 4 supra.

8 As to censures of suspension or inhibition, see PARA 1377 et seq post.

9 See the Ecclesiastical Jurisdiction Measure 1963, s 76, and PARA 1379 post.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

781 Patron under disability

NOTE 2--1925 Act s 19 repealed: Trusts of Land and Appointment of Trustees Act 1996 Sch 4.

NOTE 3--Now Mental Health Act 1983 s 94 (amended by Constitutional Reform Act 2005 Sch 4 para 152, Sch 18 Pt 2).

NOTE 4--Now Mental Health Act 1983 s 96(5).

NOTES 6, 7--1838 Act s 127 amended: Statute Law (Repeals) Act 1993.

TEXT AND NOTE 6--1968 Measure s 82 now Pastoral Measure 1983 s 82; Patronage (Benefices) Measure 1986 Sch 4 para 23, substituting 'registered patron' for 'patron'. As to the meaning of 'registered patron', see the 1983 Measure s 87(1) (para 872). 1972 Measure s 27(2) repealed: 1986 Measure Sch 5.

NOTE 7--For 1959 Act ss 103(1)(j), 149(5) see now Mental Health Act 1983 ss 96(1)(k), 148, Sch 5 paras 29, 30. 1959 Act s 121, Sch 5 now 1983 Act s 113, Sch 3.

TEXT AND NOTE 9--1963 Measure s 76(1) amended by the Clergy Discipline Measure 2003 Sch 1 para 14: see PARA 1381.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/782. Patronage held by or in trust for Roman Catholic.

782. Patronage held by or in trust for Roman Catholic.

Where an advowson or right of patronage of a benefice is held by or in trust for a Roman Catholic it cannot be exercised by the person or persons possessing it; but the University of Oxford (if the benefice is within the limits of the City of London or certain of the counties in the province of Canterbury¹) and the University of Cambridge (if the benefice is within the limits of the remaining counties in the province of Canterbury² or any of the counties in the province of York³) has the right of presenting to the benefice when it becomes void⁴. Where a patron who has been a Roman Catholic becomes mentally disordered, his powers as patron are exercisable only by the Lord Chancellor⁵.

1 The counties of Avon, Berkshire, Buckinghamshire, Cornwall, Devon, Dorset, Gloucestershire, Hampshire, Hereford and Worcester, Isle of Wight, Kent, Greater London, West Midlands, Northamptonshire, Oxfordshire, Somerset, Staffordshire, Surrey, East and West Sussex, Warwickshire, and Wiltshire: Presentation of Benefices Act 1605, s 13; Welsh Church Act 1914, s 1; Local Government Act 1972, s 1, Sch. 1, Parts I, II.

2 The counties of Bedfordshire, Cambridgeshire, Derbyshire (except such part as before 1974 was in the former county of Chester), Essex, Hertfordshire, (South) Humberside, Lincolnshire, Norfolk, Nottinghamshire, Salop, and Suffolk: Presentation of Benefices Act 1605, s 13; Welsh Church Act 1914, s 1; Local Government Act 1972, s 1, Sch. 1, Part II.

3 The counties of Cheshire, Cleveland, Cumbria, Derbyshire (except such part as before 1974 was in the former county of Derby), Durham, (North) Humberside, Lancashire, Greater Manchester, Merseyside, Northumberland, Tyne and Wear, and North, South and West Yorkshire: Presentation of Benefices Act 1605, s 13; Local Government Act 1972, s 1, Sch. 1, Part II.

4 Presentation of Benefices Act 1605, s 13; Presentation of Benefices Act 1688, s 2; Presentation of Benefices Act 1713; Church Patronage Act 1737, s 5; Roman Catholic Relief Act 1829, s 16. The universities may regulate their own procedure: Benefices Act 1898, s 7. A university's right attaches where a patron who has the right of nomination out of a limited class of clergymen, so that a college is bound to present a qualified clergyman nominated by him, is a Roman Catholic: *Boyer v Bishop of Norwich* [1892] AC 417, PC.

5 Mental Health Act 1959, s 103 (1) (j). For the position if the Lord Chancellor is a Roman Catholic, see PARA 786 post.

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

782 Patronage held by or in trust for Roman Catholic

TEXT AND NOTES 1-4--Provisions cited, except 1898 Act s 7 repealed: Patronage (Benefices) Measure 1986 s 30(1), Sch 5.

NOTE 5--See now Mental Health Act 1983 s 96(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/783. Who is deemed to be patron.

783. Who is deemed to be patron.

Certain statutes require the consent or concurrence of the patron of a benefice, or notice to him, in matters affecting the benefice. The persons deemed to be the patron for these purposes are, in all cases, those persons who, if the benefice were at the time vacant, would be entitled to present or nominate to it¹.

Where it is necessary to determine who is the patron of a benefice for the purposes of the Pastoral Measure 1968 or any scheme or order made under it², and it appears to the Church Commissioners that it is doubtful which of two or more persons is the patron, the commissioners may determine the question themselves³. If they consider that it is not possible or reasonably practicable to find the person believed to be entitled to the patronage or to ascertain who is entitled, they may direct that the diocesan board of patronage be treated as the person entitled⁴. The provisions applying to a person who cannot be found apply also where the commissioners are satisfied that a person is outside the United Kingdom and has no representative in the country authorised to act for him⁵, and either that no address for writing to him is known or that a letter asking him to nominate a representative has been sent to him at his last known address without a reply being received within a reasonable period⁶. If the commissioners consider that the interest of any person in the patronage of a benefice is so small that it may be disregarded for the purposes of the provisions of a pastoral scheme dealing with rights of patronage⁷ they may determine his interest to be negligible⁸.

1 Pluralities Act 1838, s 135; New Parishes Measure 1943, s 29 (2).

2 As to pastoral schemes and orders generally, see PARA 856 et seq post. See also the Repair of Benefice Buildings Measure 1972, s 27 (2).

3 Pastoral Measure 1968, s 80 (1) (a). Any such determination is conclusive: s 80 (1).

4 Ibid s 80 (1) (b). Any such direction is conclusive: s 80 (1). As to the board, see PARA 790 post.

5 Ibid s 80 (2) (a).

6 Ibid s 80 (2) (b).

7 See ibid s 32, and PARA 868 post. The same provisions apply for the purposes of a patronage board set up under the scheme or by the diocesan board of patronage: Pastoral Measure 1968, s 80 (3), Sch. 3 para 1; see PARA 870 post.

8 Ibid s 80 (3). After such a determination the person concerned may be treated for those purposes as having no interest in the benefice: s 80 (3).

UPDATE

776-783 Nature of Rights

As to the registration of rights of patronage, see the Patronage (Benefices) Measure 1986 (see PARA 783A).

783 Who is deemed to be patron

TEXT AND NOTE 1--1943 Measure s 29(2) repealed: Patronage (Benefices) Measure 1986 Sch 5.

NOTE 2--1972 Measure s 27(2) repealed: 1986 Measure Sch 5.

TEXT AND NOTES 3, 4--1968 Measure consolidated in Pastoral Measure 1983. 1968 Measure s 80(1) now 1983 Measure s 80(1). Where it is necessary for the purposes of the 1983 Measure or any scheme or order made under it to find the registered patron of a benefice and it appears to the commissioners that it is not possible or is not reasonably practicable to find that patron, the commissioners may direct that the diocesan board of patronage be treated as the registered patron: 1983 Measure s 80(1) (substituted by 1986 Measure Sch 4 para 22). Any such direction is conclusive: 1983 Measure s 80(1). As to the meaning of 'registered patron', see s 87(1); and PARA 872.

NOTES 5-8--Sections 32, 80, Sch 3 now 1983 Measure ss 32, 80, Sch 3 (Sch 3 amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 26).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/A. NATURE OF RIGHTS/783A. Registration of rights of patronage.

783A. Registration of rights of patronage.

1. Registration of patrons

The registrar of each diocese must compile and keep at the diocesan registry a register indicating in relation to every benefice¹ in the diocese the person who is the patron² of the benefice³. The form of the register must be in accordance with that prescribed by the Patronage (Procedure) Committee⁴ and must contain in relation to each benefice in the diocese the following particulars: (a) the name of the benefice; (b) the date of registration of the interest of each registered patron; (c) the name, style and address of each registered patron; (d) the interest of each registered patron; (e) the name, style and address of any transferee from a registered patron, the date of registration consequent on that transfer⁵ and the interest registered; (f) the name of the patron collating a priest or presenting a priest for institution, the name of that priest and the date of his collation or institution to the benefice⁶.

Except as otherwise provided by the Patronage (Benefices) Measure 1986⁷, no person is entitled to exercise any of the functions of a patron of a benefice unless he is registered as patron of that benefice⁸.

1 'Benefice' means the office of rector or vicar of a parish or parishes, with cure of souls, but not including the office of vicar in a team ministry or any office in a cathedral church: 1986 Measure s 39(1). 'Parish' means a parish constituted for ecclesiastical purposes (see PARAS 583, 586) and does not include a conventional district (see PARA 540): s 39(1). Where a pastoral scheme or pastoral order (see PARA 856 et seq) provides for the holding of benefices in plurality, any reference in the 1986 Measure to a benefice is construed as including a reference to benefices held in plurality: s 39(2).

As to provisions relating to Crown benefices, see s 35 (see PARA 783A.10).

2 'Patron', in relation to any benefice, means the person or persons entitled, other than by virtue of *ibid* s 16 (see PARA 818A.8), to present to that benefice on a vacancy, including (a) in any case where the right to present is vested in different persons jointly, every person whose concurrence would be required for the exercise of the joint right and (b) in any case where the patronage is vested in different persons by way of alternate or successive right of presentation, every person who would be entitled to present on the next or any subsequent turn: s 39(1).

3 *Ibid* s 1(1); Patronage (Benefices) Rules 1987, SI 1987/773, r 2. In the case of a right of patronage of a benefice which belongs to an office, the registrar's duty under the 1986 Measure s 1(1) is to register that office as a patron of that benefice: s 2.

The register must be open to inspection by the public at all reasonable times and any person may make searches in it and make extracts from it on payment of such fees as may be prescribed: s 1(5); 1987 Rules r 10(1). The registrar must, on request, supply a certified copy of an entry in the register on payment of such fee as may be prescribed: r 10(2). As to fees, see Ecclesiastical Judges and Legal Officers (Fees) Order 1998, SI 1998/1711.

4 As to the Patronage (Procedure) Committee, see 1986 Measure s 38 (see PARA 783A.11).

5 'Transfer' means a transfer *inter vivos* including a transfer by way of exchange, a transfer by operation of law, a transfer on the appointment of a new trustee and a transfer by the personal representatives of a deceased person: SI 1987/77 r 3(2).

6 *Ibid* r 3(1).

7 As to rights of patronage exercisable otherwise than by a registered patron, see the 1986 Measure s 5 (see PARA 783A.7).

8 Ibid s 1(2). The registration of any person or office as a patron of a benefice is conclusive evidence of the matters registered: ss 1(4), 2.

Detailed provisions relating to the registration of patrons and related matters are contained in Sch 1; see PARAS 783A.2-783A.5.

2. Application for registration

After 1 October 1987, any person to whom a right of patronage of a benefice is transferred must before the expiration of the period of 12 months beginning with the date on which the transfer takes effect apply to the registrar of the diocese to be registered as a patron of that benefice¹. On a transfer inter vivos the applicant must send to the registrar with the instrument of transfer any notice of consent required by the Patronage (Benefices) Measure 1986². On a transfer by personal representatives, the applicant must send to the registrar with the instrument of transfer an office copy of the grant of probate or of the letters of administration to the estate of the deceased patron³.

On being satisfied with an application made in accordance with the prescribed provisions⁴, the registrar must register a transferee as patron⁵. On the completion of a registration, the registrar must send the patron, without charge, a certified copy of the relevant entry in the register⁶.

Any person who claims in relation to any benefice (a) that he is entitled to be registered as a patron of that benefice in place of, or in addition to, any person who is so registered or (b) that any information registered as to the exercise of a right of presentation to that benefice is incorrect, may at any time apply to the registrar for the register to be rectified⁷.

1 Patronage (Benefices) Measure 1986 Sch 1 para 4. As to persons claiming to be a patron of a benefice on 1 October 1987, see Sch 1 para 3.

2 Patronage (Benefices) Rules 1987, SI 1987/773, r 7(1). As to the required notice of consent, see 1986 Measure s 3 (see PARA 802A).

3 SI 1987/773 r 7(2).

4 Ie the 1986 Measure and SI 1987/773.

5 Ibid r 8.

6 Ibid r 9. As to the inspection of the register, see r 10 (see PARA 783A.1).

7 1986 Measure Sch 1 para 5. As to the prescribed form of application, see SI 1987/773 Form 6. As to rectification of the register, see 1986 Measure s 4 (see PARA 783A.6).

3. Determination of disputes

Where the registrar decides that (a) any person (i) who is named in a list of patrons¹ or (ii) who has made an application² for registration, is not entitled to be registered as a patron³ of the benefice⁴ concerned or (b) information which any patron of a benefice wishes to be registered as to the exercise of his right to present to that benefice ought not to be registered or (c) any person who is registered as a patron of a benefice was not entitled to be so registered or (d) any information which is registered as to the exercise of a right to present to a benefice is incorrect, he must serve a notice on that person informing him of his decision and of the effect of the following provisions⁵. A person on whom a notice is served under the foregoing provision may, before the expiration of the period of 28 days beginning with the date of the notice, appeal against the registrar's decision by sending him a notice of appeal⁶. On receiving such a notice, the registrar must refer the appeal to the chancellor of the diocese, who must decide whether to uphold or dismiss the appeal and must inform the registrar and the appellant of his decision⁷.

1 See Patronage (Benefices) Measure 1986 Sch 1 para 1.

2 Ie under ibid Sch 1 para 3, 4 or 5 (see PARA 783A.3).

3 See PARA 783A.1.

4 See PARA 783A.1.

5 1986 Measure Sch 1 para 7. Where a right of patronage of a benefice belongs to, or is claimed to belong to, an office, any notice required to be served under Sch 1 para 7 or information required to be given under Sch 1 para 9 must be served on or given to the person who then holds that office: Sch 1 para 16.

6 Ibid Sch 1 para 8. The Patronage (Appeals) Committee, as constituted by Sch 1 para 10, in accordance with its powers under Sch 1 para 11 has made rules regulating the procedure and practice on or in connection with proceedings on an appeal under Sch 1, including rules regulating matters relating to costs, fees and expenses in respect of any such proceedings: Patronage (Appeals) Rules 1988, SI 1988/1980.

7 1986 Measure Sch 1 para 9(1). See also NOTE 5. Any proceedings on an appeal to the chancellor of a diocese under Sch 1 para 9 must be held in public and any party to such proceedings is entitled to appear by counsel or a solicitor: Sch 1 para 9(2).

4. Registration

In the case of any disagreement as to the person entitled to be registered as patron¹ of a benefice² or as to the exercise of the right of presentation, the registrar as soon as practicable after he (a) has determined that a person is entitled to be registered as a patron of a benefice (and has determined the information, if any, to be registered as to the exercise of the right of presentation) and either the prescribed period³ has expired or an appeal against the registrar's determination has been dismissed or (b) has been informed of the decision⁴ of the chancellor of the diocese on an appeal⁵, must register that person as a patron of that benefice (together with any information to be registered as to the exercise of the right of presentation) and must inform him that he has done so⁶.

Unless the person entitled to the right of patronage in question has already been registered under the foregoing provision⁷, the registrar must at the end of the registration period⁸ register as a patron of the benefice specified in the appropriate notice⁹ the person to whom the notice was sent (and the information in that notice) and must inform him that he has done so¹⁰.

1 See PARA 783A.1.

2 See PARA 783A.1.

3 Ie the period mentioned in the Patronage (Benefices) Measure 1986 Sch 1 para 8 (see PARA 783A.3).

4 Ie a decision as to the person entitled to be registered as a patron of the benefice or as to any information to be registered in respect of the exercise of right of presentation: ibid Sch 1 para 13(1)(b).

5 Ie under ibid Sch 1 para 9: see PARA 783A.3.

6 Ibid Sch 1 para 13(1). Where a right of patronage of a benefice belongs to, or is claimed to belong to, an office, any information required to be given under Sch 1 para 13 must be given to the person who then holds that office: Sch 1 para 16.

7 Ie ibid Sch 1 para 13(1).

8 See PARA 783A.1.

9 Ie a notice under 1986 Measure Sch 1 para 2.

10 Ibid Sch 1 para 13(2). See also NOTE 6.

Any person who is a patron of two or more benefices which are for the time being held in plurality may be registered as a patron of those benefices while so held: Sch 1 para 15.

5. Notices to parishes

After the registrar has registered any person as a patron¹ of a benefice² he must within one month from the end of the registration period³ or, in the case of a right of patronage registered after the end of that period, as soon as practicable after the registration, send to the secretary of the parochial church council of the parish, or of each of the parishes, belonging to the benefice a notice⁴ in the prescribed form stating that that person has been registered and giving the name and address of that person and particulars of the benefice and of the information which has been registered in relation to it⁵.

1 See PARA 783A.1.

2 See PARA 783A.1.

3 See PARA 783A.1.

4 As to the prescribed form of notice, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 7.

5 Patronage (Benefices) Measure 1986 Sch 1 para 14.

6. Rectification of register

The registrar of a diocese may rectify an entry in the register of patrons¹ in any case (a) where all the persons interested agree to the rectification of the entry or (b) where the registrar decides that the entry should be rectified (i) because a person is, or is not, entitled to be registered as patron of a benefice or (ii) because information registered as to the exercise of a right of presentation to a benefice is incorrect, and, in either case, no appeal against the registrar's decision has been brought within the specified period² or the appeal has been dismissed or (c) where any rectification of the entry is required by reason of a decision³ of the chancellor of the diocese⁴. Where in the case of an entry in the register relating to any benefice (a) the entry has been adverse to the claim of any person for a period of more than 30 years or (b) if the period of 30 years from the end of the registration period⁵ has not expired, the benefice has been held adversely to the claim of any person for a period of more than 30 years, then no rectification of that entry may be made in favour of that person unless all the persons interested agree to that rectification⁶.

1 Ie a register compiled and maintained under the Patronage (Benefices) Measure 1986 s 1 (para 783A.1).

2 Ie the period specified in *ibid* Sch 1 para 8: see PARA 783A.3.

3 Ie a decision under *ibid* Sch 1.

4 *Ibid* s 4(1).

5 See PARA 783A.1.

6 1986 Measure s 4(2), which applies notwithstanding anything in s 4(1) or in Sch 1 para 5 (see PARA 783A.2).

The Limitation Act 1980 s 25 no longer has effect: 1986 Measure s 4(3).

7. Rights of patronage exercisable otherwise than by registered patron

Where an office is registered¹ as a patron of a benefice, the person who is for the time being the holder of that office is entitled to discharge all the functions of a patron of that benefice².

Where a registered patron of a benefice dies, until the person to whom the right of patronage is to be transferred is registered as a patron of that benefice, the personal representatives of the deceased patron are entitled to discharge all the functions of a patron of that benefice³.

A registered patron of a benefice may by an instrument creating a power of attorney confer on the donee of the power authority to discharge on his behalf all the functions of a patron of that benefice, and where such a power is created the donee is entitled to discharge those functions until the power is revoked⁴.

Any person entitled to discharge any functions in relation to a benefice by virtue of these provisions is entitled to discharge those functions notwithstanding that he is not registered in the register of patrons in relation to that benefice⁵.

These provisions⁶ apply to a registered patron of a shared benefice⁷ other than Her Majesty or the possessor for the time being of the Duchy of Cornwall⁸.

1 'Registered' means registered under the Patronage (Benefices) Measure 1986 in a register of patrons: s 39(1). See PARA 783A.1.

2 Ibid s 5(1), under which his entitlement is subject to ss 7-24 (see PARA 818A).

3 Ibid s 5(2), under which their entitlement is subject to ss 7-24.

4 Ibid s 5(3), under which his entitlement is subject to ss 7-24.

5 Ibid s 5(4).

6 Ie ibid s 5.

7 See PARA 783A.9.

8 1986 Measure s 35(3).

8. Appointment of patron of benefice which has no registered patron

Where at the expiration of the registration period¹ or at any subsequent time, no person is registered as the patron² of a benefice³, then unless in relation to that benefice (a) a prescribed notice⁴ has been served on any person by the registrar of the diocese in which the benefice is and either a specified period⁵ has not expired or an appeal⁶ has not been determined or (b) the right of presentation to the benefice is exercisable by the personal representatives of a deceased patron, the diocesan board of patronage⁷ for the diocese becomes the patron of that benefice, and the registrar of the diocese must register that board as patron⁸.

1 See PARA 783A.1.

2 See PARA 783A.1.

3 See PARA 783A.1.

4 Ie a notice under the Patronage (Benefices) Measure 1986 Sch 1 para 7: see PARA 783A.3.

5 Ie the period mentioned in ibid Sch 1 para 8: see PARA 783A.3.

6 Ie an appeal under ibid Sch 1 para 9: see PARA 783A.3.

7 See PARA 790.

8 1986 Measure s 25. As to the form of notice to be given to a prospective patron informing him of the terms of s 25, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 5.

9. Crown benefices

Subject to the following exceptions, the foregoing provisions of the Patronage (Benefices) Measure 1986 do not apply to any benefice the patronage or any share in the patronage of which is vested in or exercisable by Her Majesty, whether in right of Her Crown or Her Duchy of Lancaster or otherwise, or is vested in or exercisable by the possessor for the time being of the Duchy of Cornwall, whether Her Majesty or a Duke of Cornwall ('a Crown benefice')¹.

Where it appears to the registrar of a diocese that a benefice is a Crown benefice, he must, as soon as practicable after 1 October 1987, notify Her Majesty or the possessor for the time being of the Duchy of Cornwall that he proposes to register² Her Majesty or the possessor of the Duchy of Cornwall as patron of the benefice specified in the notice³.

Where in the case of a Crown benefice a share only in the patronage is vested in Her Majesty or the possessor for the time being of the Duchy of Cornwall ('a shared benefice'), the registration provisions⁴ apply for the purpose of enabling any patron other than Her Majesty or the possessor of the Duchy of Cornwall to be registered as a patron of that benefice⁵.

1 Patronage (Benefices) Measure 1986 s 35(1), which is expressed to be without prejudice to the application of ss 28 (see PARA 832), 31 (see PARA 826-830) to the Crown.

Without prejudice to the provisions of the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, the 1986 Measure s 35 applies to a benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor as it applies to a Crown benefice; accordingly any reference in s 35 to Her Majesty must be construed, in relation to any benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor, as including a reference to the Lord Chancellor: s 36.

2 See generally para 783A.1.

3 1986 Measure s 35(2). As to the prescribed form of notification of registration, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 2.

4 See the 1986 Measure ss 1, 2: see PARA 783A.1.

5 Ibid s 35(3).

10. Notices and other documents

All notices, agreements, approvals, consents and requests required or authorised by the Patronage (Benefices) Measure 1986 to be served, sent, given or made must be in writing, and, subject to exception¹, all such notices and other matters required by the 1986 Measure to be prescribed must be in the form set out in the Patronage (Benefices) Rules 1987². Any other matters may be in such form as may be approved from time to time by the Patronage (Procedure) Committee³.

Any notice or other document required or authorised by the 1986 Measure to be served on or sent or given to any person may be served, sent or given by delivering it to him, or by leaving it at his proper address⁴, or by post⁵. Any notice or other document required or authorised to be served, sent or given to a corporation or to an unincorporated body having a secretary or clerk or to a firm, is duly served, sent or given if it is served on or sent or given to the secretary or clerk of the corporation or body or a partner of the firm⁶.

1 An exception is made for notices under the Patronage (Benefices) Measure 1986 Sch 1 paras 7 and 8: see PARA 783A.3.

2 Ibid s 37(1); Patronage (Benefices) Rules 1987, SI 1987/773, r 14(1). If at the material time a parish has no parochial church council or no secretary of the council, the provisions of the 1986 Measure and SI 1987/773 with respect to notices, consents and other things required or authorised to be given or done by or to such council or such secretary have effect, if the parish has churchwardens, as if the churchwardens were the council or the secretary; if there are no churchwardens, those provisions have no effect with respect to that parish: r 15.

3 Ibid r 14(2). The precedents of such matters and any amendments, revocations or additions to them must be approved by the Standing Committee of the General Synod and must then be communicated to the registrar and designated officer of every diocese: s 14(2). As to the meaning of 'designated officer', see r 1(1) (see PARA 818A.10).

4 The proper address of the person on or to whom any such notice or other document is required or authorised to be served, sent or given is his last known address, except that in the case of the secretary or clerk of a corporation, it is that of the registered or principal office of the corporation, and in the case of the secretary or clerk of an unincorporated body or a partner of a firm, it is that of the principal office of the body or firm: 1986 Measure s 37(4), which is expressed to be subject to s 37(5). If the person on or to whom any such notice or other document is to be served, sent or given has specified an address within the United Kingdom for the serving, sending or giving of the notice or other document, his proper address for the purposes of s 37 is that address: s 37(5).

5 Ibid s 37(2).

6 Ibid s 37(3).

11. Patronage (Procedure) Committee

The Patronage (Procedure) Committee has power to make rules with regard to any matter of procedure arising under the Patronage (Benefices) Measure 1986 and in particular with regard to any matter to be prescribed under the Measure¹. The committee consists of a chairman and four other members appointed by the Appointments Committee of the General Synod².

1 Patronage (Benefices) Measure 1986 s 38(1), (2). However, no rules may be made under s 38(2) with regard to any matter in respect of which rules may be made by the Patronage (Appeals) Committee under Sch 1 para 11: s 38(2). As to further provisions relating to the rule-making procedure, see s 38(4)-(6), Sch 1 paras 10, 12; Church of England (Miscellaneous Provisions) Measure 1995 s 14; SI 1998/1715.

2 1986 Measure s 38(1); Church of England (Transfer of Functions) Order 1998, SI 1998/1715. Any three members of the Patronage (Procedure) Committee may exercise all the powers of the committee: 1986 Measure s 38(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/B. CROWN PATRONAGE/784. The Sovereign as patron.

B. CROWN PATRONAGE

784. The Sovereign as patron.

Besides possessing the patronage of certain benefices in right of the Crown or of the Duchy of Lancaster, or of the Duchy of Cornwall where there is not a Duke of Cornwall of full age, the Sovereign is the patron paramount of all the other benefices¹ and, as such, has the right to fill all such benefices as are not regularly filled by their patrons, whether this happens by neglect, as where the patronage ultimately lapses to the Crown², or by incapacity to present, as where the patron is an alien or has been guilty of simony³ or the like⁴. Moreover, where a benefice becomes void by the promotion of its holder to a see in the province of Canterbury or York, or where the advowson of a benefice is attached to a see and the benefice is void during a vacancy in the see, or where the advowson is attached to another ecclesiastical office and the benefice is void during a vacancy of the office occasioned by the promotion of the holder to such a see, the Sovereign has the prerogative of presenting to the void benefice⁵. As against the Sovereign a benefice is not deemed full by institution or collation until induction has supervened⁶. In exercising Crown patronage of a benefice above the yearly value of £20 in the Queen's books the Queen acts under the advice of the Prime Minister and the First Lord of the Treasury⁷. Where the yearly value of a benefice does not exceed £20 in the Queen's books the Queen is advised by the Lord Chancellor, the Lord Keeper of the Great Seal, or the Chancellor of the Duchy of Lancaster⁸. No Roman Catholic or Jew, however, may advise the Queen as to the exercise of ecclesiastical patronage⁹.

Under certain statutes where the consent of a patron is required or notices are to be served on him the consent of and notices to the Crown are given by or to the First Lord of the Treasury, the Lord Chancellor or the Chancellor of the Duchy of Lancaster as the case may be¹⁰.

Where the Crown or the Duchy of Cornwall is patron of a benefice, or has a share in the patronage, no pastoral scheme or order¹¹ may apply to that benefice without the consent of the Queen or the Duke of Cornwall, if he is of full age, given generally or in respect of a particular benefice¹².

1 Gib Cod 763; Bac Abr, Prerogative (D) 2.

2 See PARA 826 post.

3 See PARA 832 post.

4 Gib Cod 763. For the position where a patron is incapable by reason of mental disorder, see PARA 781 ante.

5 Gib Cod 763; *Basset v Gee* (1600) Cro Eliz 790; *R v Bishop of London and Lancaster* (1693) 3 Lev 377; *Potter v Chapman* (1750) Amb 98 at 101; *R v Eton College* (1857) 8 E & B 610 at 632; and see *Bishop of London v A-G* (1694) Show Parl Cas 164; *Troward v Calland* (1796) 8 Bro Parl Cas 71, HL. As to patronage lapsing to a bishop, however, see PARA 826 note 1 post. The prerogative of presenting to a benefice vacated by the promotion of the incumbent to a bishopric must be exercised during the life of the person promoted: *Archbishop of Armagh v A-G* (1730) 3 Bro Parl Cas 507 at 514n, HL. The prerogative is lost if the Queen does not present and another's presentee is admitted and dies without having been disturbed: *Basset v Gee* supra.

6 Gib Cod 763. Until induction she may revoke the presentation and, if her presentee dies after institution but before induction, she may present another clergyman: *Wright and Bishop of Norwich's Case* (1590) 1 Leon 156.

7 See the Pluralities Act 1838, s 126; Pastoral Measure 1968, s 81 (2) (a).

8 Gib Cod 763, 764; Pluralities Act 1838, s 126; Pastoral Measure 1968, s 81 (2) (b)-(d).

9 Roman Catholic Relief Act 1829, s 18; Jews Relief Act 1858, s 4. The offence is a high misdemeanor and disables the offender from thereafter holding any office under the Crown: Roman Catholic Relief Act 1829, s 18; Jews Relief Act 1858, s 4. As to high misdemeanors, see PARA 360 note 2 ante. For the position if the Lord Chancellor is a Roman Catholic, see PARA 786 post.

10 Clergy Residences Repair Act 1776, s 20; Parsonages Act 1838, s 10 (applied by the Church Building Act 1839, s 22, to that Act and to the Queen Anne's Bounty Act 1714); Pluralities Act 1838, s 126.

11 As to pastoral schemes and orders, see PARA 856 et seq post.

12 Pastoral Measure 1968, s 81 (1). This is without prejudice to the application to the Crown of s 72, for which see PARAS 816, 817 post. Consents may be given by, and notices served on, the Prime Minister and First Lord of the Treasury, the Lord Chancellor, the Chancellor of the Duchy of Lancaster and any person authorised to act on behalf of the Duke of Cornwall under the Duchy of Cornwall Management Act 1963, as the case may be: s 81 (2); see notes 7-10 supra, and PARA 785 post. See also the Repair of Benefice Buildings Measure 1972, s 27, which applies the Pastoral Measure 1968, s 81 (2), for the purposes of the Measure of 1972.

UPDATE

784 The Sovereign as patron

NOTES 6, 7--1968 Measure consolidated in Pastoral Measure 1983; see s 81(2).

NOTES 7, 8, 10--Pluralities Act 1838 s 126 amended and repealed in part: Constitutional Reform Act 2005 Sch 4 para 8, Sch 18 Pt 2 (not yet in force).

NOTE 10--The first two repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 12--Section 81 now 1983 Measure s 81, amended by Patronage (Benefices) Measure 1986 Sch 5. 1968 Measure s 72, consolidated in 1983 Measure s 72, repealed: 1986 Measure Sch 5.

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785. Duchies of Lancaster and Cornwall.

Patronage belonging to the Queen in right of the Duchy of Lancaster is exercised under the advice of the Chancellor of the duchy¹.

Where there is a Duke of Cornwall of full age², patronage belonging to the Duchy of Cornwall is exercisable by him, and when that is not the case, and the patronage belongs to the Crown in right of the duchy, it is exercisable by the same persons as the Crown patronage, namely, by the Queen on the advice of the Prime Minister and the First Lord of the Treasury if the benefice is above the yearly value of £20 in the Queen's books, and, if not, by the Lord Chancellor³.

¹ *R v Bishop of Lincoln and King* (1613) Moore KB 874; Pluralities Act 1838, s 126; Pastoral Measure 1968, s 81 (2) (c). See PARA 784 ante.

² *Ie* over the age of eighteen years: Family Law Reform Act 1969, s 10 (3).

³ Pluralities Act 1838, s 128; Duchy of Cornwall Management Act 1863, s 38; Pastoral Measure 1968, s 81 (2) (d). See PARA 784 ante. For the position if the Lord Chancellor is a Roman Catholic, see PARA 786 post.

UPDATE

785 Duchies of Lancaster and Cornwall

TEXT AND NOTE 3--Pluralities Act 1838 s 128 amended and repealed in part: Constitutional Reform Act 2005 Sch 4 para 9, Sch 18 Pt 2 (not yet in force).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/B. CROWN PATRONAGE/786. Office held by Roman Catholic or Jew.

786. Office held by Roman Catholic or Jew.

Where a right of presentation to a benefice belongs to an office in the gift or appointment of the Crown which is held by a Roman Catholic or a Jew, the right devolves on and is exercisable by the Archbishop of Canterbury¹. If the Lord Chancellor is a Roman Catholic the Queen may by Order in Council provide for the exercise of any patronage to livings normally in the Lord Chancellor's gift to be performed by the Prime Minister or any other minister of the Crown².

1 Roman Catholic Relief Act 1829, s 17; Jews Relief Act 1858, s 4. See further PARAS 1394, 1429 post.

2 Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, s 2.

UPDATE

786 Office held by Roman Catholic or Jew

TEXT AND NOTE 1--Repealed: Patronage (Benefices) Measure 1986 s 30(3), Sch 5.

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C. NEW RIGHTS OF PATRONAGE

787. Vesting of patronage.

Where in accordance with the Church Commissioners' rules a benefice is augmented by a benefaction of £200 or upwards in money, land or tithes, its patronage may be vested in the benefactor, his heirs and successors, by an agreement made, with the commissioners' consent, by the Queen under the sign manual, or by any bodies politic or corporate, or any person of full age, tenant of the advowson in fee simple or in fee tail or for life with remainder to his own issue¹. Where a person is a patient the Lord Chancellor may enter into the agreement on his behalf².

¹ Queen Anne's Bounty Act 1714, s 8; Queen Anne's Bounty Act 1840, ss 2-4; Church Patronage Act 1846, s 1.

² Mental Health Act 1959, ss 102, 103 (1) (j).

UPDATE

787-789 New Rights of Patronage

Where any bishop of a diocese, incumbent of a benefice or holder of an office who is a patron of a benefice to which any relevant instrument relates by virtue of his office ceases to be the bishop, incumbent or office holder, he must cease to be such a patron: Church of England (Miscellaneous Provisions) Measure 1992 s 5(2). Where any bishop of a diocese, incumbent of a benefice or holder of an office has, by virtue of a relevant instrument, a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons he will, on such a vacancy occurring, without any deed of appointment or other process, become a patron of the benefice by virtue of his office unless he has previously resigned as patron of the benefice: s 5(3). 'Relevant instrument' means an instrument made in pursuance of the Church Building Acts 1818-1884 or otherwise under which the person who is for the time being the bishop of a diocese or the incumbent of a benefice or the holder of any other office has a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons: 1992 Measure s 5(1).

787 Vesting of patronage

TEXT AND NOTE 1--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

NOTE 2--See now Mental Health Act 1983 ss 95, 96(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/C. NEW RIGHTS OF PATRONAGE/788. Patronage of new churches and benefices before 1943.

788. Patronage of new churches and benefices before 1943.

Provision was made by the Church Building Acts¹ and the New Parishes Acts² for the patronage of churches, chapels and benefices established under those Acts. Those Acts were consolidated and largely repealed³, but existing rights of patronage in parishes and districts formed under the Acts were protected⁴. The rights of patronage in such new districts and parishes vested, by agreement⁵ and otherwise, in various persons (for example the patron of a parish out of which the new district was formed⁶, its incumbent⁷, the bishop of the diocese⁸, the Crown⁹ or other persons¹⁰, but in all cases the schemes under which the districts or parishes were formed had to be registered in the diocesan registries¹¹ and they will show what rights of patronage exist in each parish or district formed under those Acts.

1 These Acts are now mainly repealed: see PARA 537 ante.

2 These Acts are partly repealed: see PARA 537 ante.

3 See the New Parishes Measure 1943 (partly repealed).

4 Ibid s 32 (1) (b). As to rights of patronage upon the conversion of a district existing in 1943 into a new parish, see PARA 789 post.

5 See the Church Building Act 1819, ss 6, 15; Church Building Act 1831, s 24; Church Building Act 1840, s 1; Church Building Act 1845, s 23; Church Building Act 1848, s 4. All these Acts were repealed by the New Parishes Measure 1943, s 32 (1), Schedule (repealed). See also the Statute Law (Repeals) Act 1974, s 1, Schedule, Part VII.

6 See the Church Building Act 1818, s 67; Church Building Act 1819, s 13; Church Building Act 1822, s 22; and the Church Building Act 1824, s 13. All these provisions were repealed: cf. note 5 supra.

7 See the Church Building Act 1818, s 68; Church Building Act 1819, s 16; Church Building Act 1824, ss 12, 13; Church Building Act 1838, s 12; Church Building Act 1840, s 1; Church Building Act 1845, s 17; and the New Parishes Act 1856, s 22. All these provisions were repealed by the New Parishes Measure 1943, s 32 (1), Schedule (repealed).

8 See the New Parishes Act 1843, s 21; New Parishes Act 1844, s 2; and the Church Building Act 1851, s 26. All these provisions were repealed: cf. note 5 supra.

9 See the New Parishes Act 1844, s 1 (repealed: cf. note 5 supra).

10 See the New Parishes Act 1843, s 20 (persons who made endowment); the Church Building Act 1851, s 7 (person who built or endowed new church); and the New Parishes Act 1856, ss 16-21 (assignees of right of patronage). All these provisions were repealed: cf. note 5 supra.

11 Church Building Act 1831, s 24 (registration of declaration of agreement and separation made under the Act); Church Building Act 1839, s 6 (registration of orders for giving effect to certain schemes concerning alteration of boundaries); Ecclesiastical Commissioners Act 1840, s 84 (registration of orders affecting schemes under the Act); New Parishes Act 1843, s 23 (application of provisions in earlier enactments); Church Building (Banns and Marriages) Act 1844, s 6 (registration provisions applied); New Parishes Act 1844, s 8 (registration of certain original documents); Church Building Act 1848, s 2 (registration of alteration of certain boundaries); Church Building Act 1851, s 16 (application of provisions of earlier enactments); New Parishes Act 1856, s 30 (application of provisions of earlier enactments); New Parishes Acts and Church Building Acts Amendment Act 1884, s 2 (4) (registration of maps and of orders ratifying certain schemes). Except for the Church Building Act 1839, s 6, and the Ecclesiastical Commissioners Act 1840, s 84, all these sections were repealed: cf. note 5 supra.

UPDATE

787-789 New Rights of Patronage

Where any bishop of a diocese, incumbent of a benefice or holder of an office who is a patron of a benefice to which any relevant instrument relates by virtue of his office ceases to be the bishop, incumbent or office holder, he must cease to be such a patron: Church of England (Miscellaneous Provisions) Measure 1992 s 5(2). Where any bishop of a diocese, incumbent of a benefice or holder of an office has, by virtue of a relevant instrument, a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons he will, on such a vacancy occurring, without any deed of appointment or other process, become a patron of the benefice by virtue of his office unless he has previously resigned as patron of the benefice: s 5(3). 'Relevant instrument' means an instrument made in pursuance of the Church Building Acts 1818-1884 or otherwise under which the person who is for the time being the bishop of a diocese or the incumbent of a benefice or the holder of any other office has a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons: 1992 Measure s 5(1).

788 Patronage of new churches and benefices before 1943

NOTE 11--1839 Act s 6 repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/C. NEW RIGHTS OF PATRONAGE/789. Patronage since 1943.

789. Patronage since 1943.

After 4th February 1943 new parishes and ecclesiastical districts could only be formed under the New Parishes Measure 1943¹, which was based generally on the New Parishes Acts and replaced the provisions of those Acts and the Church Building Acts, which were contained in more than twenty statutes².

Where an existing church was proposed as the new parish church³, corporation, whether ecclesiastical, collegiate or lay, tenants for life and persons acting in a fiduciary capacity who were entitled to any right of patronage of the existing church had full power to agree with the Church Commissioners and the diocesan bishop as to the surrender, exercise or transfer of the right⁴. If a new church had been or was to be erected, the bishop might, before its consecration, agree with the incumbent and the patron of the ecclesiastical district⁵ in which it was situated as to the person by whom the patronage of the new church, after consecration, was to be exercised; upon registration in the diocesan registry such an agreement effectively vested the right of patronage in accordance with its terms⁶.

Subject to such agreements the right of patronage of any new parish or district constituted by schemes under the Measure⁷ belonged to the bishop⁸ unless or until the right had been otherwise wholly⁹ assigned or unless an existing church became the parish church of the new parish and the right of patronage of that church belonged to another person¹⁰.

Schemes for the union of benefices, where all the benefices were not in the same patronage, had to contain directions for the settlement of the future exercise of the rights of patronage of the united benefice¹¹ and similarly reorganisation schemes forming new benefices or parishes had to vest the patronage of those benefices in one or more patrons and, where necessary, settle the future exercise of the right¹².

The New Parishes Measure 1943 was repealed as regards the creation of new parishes¹³ by the Pastoral Measure 1968¹⁴, with effect from 1st April 1969¹⁵. As from that date the formation of new parishes is provided for by pastoral schemes made under the Measure¹⁶. A pastoral scheme creating any new benefice may provide for vesting the patronage of the benefice in a patron or patrons and, where necessary, for determining the manner in which the rights of patronage are to be exercised¹⁷. Unless such provision is made by a scheme the patron of a new benefice so created is the diocesan board of patronage¹⁸ for the diocese in which the benefice lies¹⁹.

1 See the New Parishes Measure 1943, s 8 (repealed by the Pastoral Measure 1968, s 95, Sch. 9).

2 See PARA 788 ante.

3 See PARA 539 ante.

4 New Parishes Measure 1943, s 9 (1) (a) (repealed). Trustees of any endowment for the benefit of the church or of the incumbent were empowered to agree with the commissioners and the bishop for the transfer of the endowment and to transfer it accordingly: s 9 (1) (b) (repealed).

5 'Ecclesiastical district' included any parish whether ancient or new and any district formed under the Church Building Acts 1818 to 1884 or the New Parishes Acts 1843 to 1884 (all mainly repealed) or the New Parishes Measure 1943, or any other district of which the minister had the separate cure of souls: s 29 (1).

6 Ibid s 9 (2) (repealed).

- 7 See *ibid* s 1 (repealed).
- 8 *Ie* this bishop of the diocese in which the new parish or district was situate.
- 9 There was also an exception for partial assignment: see the New Parishes Measure 1943, s 10 (1) (a) (repealed).
- 10 *Ibid* s 10 (1) (b) (repealed). As to the exercise of the right by the bishop, see PARA 848 post. The right of patronage may not be sold: see PARA 804 post.
- 11 Union of Benefices Measure 1923, s 5 (repealed).
- 12 Reorganisation Areas Measure 1944, s 12 (1) (repealed): see PARA 831 post.
- 13 *Ie* the New Parishes Measure 1943, ss 1-12, 22-27, 30.
- 14 Pastoral Measure 1968, s 95, Sch. 9.
- 15 *Ie* the day appointed under *ibid* s 96 (3): see the London Gazette, 7th February 1969.
- 16 As to pastoral schemes generally, see PARA 856 et seq. post.
- 17 Pastoral Measure 1968, s 32 (2).
- 18 As to diocesan boards of patronage, see PARA 790 post.
- 19 Pastoral Measure 1968, s 32 (3).

UPDATE

787-789 New Rights of Patronage

Where any bishop of a diocese, incumbent of a benefice or holder of an office who is a patron of a benefice to which any relevant instrument relates by virtue of his office ceases to be the bishop, incumbent or office holder, he must cease to be such a patron: Church of England (Miscellaneous Provisions) Measure 1992 s 5(2). Where any bishop of a diocese, incumbent of a benefice or holder of an office has, by virtue of a relevant instrument, a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons he will, on such a vacancy occurring, without any deed of appointment or other process, become a patron of the benefice by virtue of his office unless he has previously resigned as patron of the benefice: s 5(3). 'Relevant instrument' means an instrument made in pursuance of the Church Building Acts 1818-1884 or otherwise under which the person who is for the time being the bishop of a diocese or the incumbent of a benefice or the holder of any other office has a right to be appointed a patron of a benefice in preference to any other person on a vacancy occurring amongst the patrons: 1992 Measure s 5(1).

789 Patronage since 1943

TEXT AND NOTES 14-19--1968 Measure consolidated in Pastoral Measure 1983; see s 32.

TEXT AND NOTES 18, 19--Now *ibid* s 32(3), (3A); Patronage (Benefices) Measure 1986 s 29(1). Without prejudice to the generality of the 1983 Measure s 32(1) and (2), a pastoral scheme (whether it relates only to an existing benefice or provides for the creation of a new benefice), may, with the consent of the registered patron (see s 87(1); see PARA 872) or patrons of any benefice affected by the scheme, provide for the transfer of existing rights of patronage to, or for the vesting of new rights of patronage in, a special patronage board constituted by the scheme: s 32(3). A special patronage board constituted by a pastoral scheme under s 32(3) consists of such members as the

scheme may provide and the scheme may designate the member who is to be chairman of the board: s 32(3A). The following provisions of Sch 3 para 1 apply to such a patronage board as they apply to a patronage board constituted by a pastoral scheme establishing a team ministry: (a) para 1(6) so far as it relates to any member of a board; (b) para 1(7) so far as it relates to the entitlement to votes of any member of a board; (c) para 1(8) and (d) para 1(10) so far as it relates to the transfer of the rights to be members of a board (s 32(3A)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/790. Diocesan boards of patronage.

D. PATRONAGE OF CORPORATIONS AND TRUSTEES

790. Diocesan boards of patronage.

In every diocese there is a diocesan board of patronage¹ consisting of the bishop, who is chairman, three clergymen elected by the House of Clergy of the diocesan synod², five laymen elected by the House of Laity of that synod, and the archdeacon and the rural dean in whose respective jurisdictions any particular benefice in respect of which business is transacted is situate³. The board may acquire, hold and transfer rights of patronage, and may exercise any right of patronage so held⁴. No right of patronage may be transferred by the board without the consent of the parochial church council of the parish concerned, except when the transfer is incidental to the transfer of that parish from one diocese to another, when the right of patronage may be transferred to the board of patronage of the other diocese⁵.

1 The board is a body corporate by the name of the diocese in which it is established followed by the words 'Diocesan Board of Patronage'; it has perpetual succession and a common seal: Benefices (Diocesan Board of Patronage) Measure 1932, s 1 (4).

2 As to diocesan synods, see PARA 503 et seq ante.

3 Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (1); Synodical Government Measure 1969, s 4 (7). The election is on the principle of proportional representation by single transferable vote: Benefices (Diocesan Boards of Patronage) Measure 1932, s 1 (2). The bishop may nominate a suffragan or assistant bishop of the diocese to act in his place: s 1 (3). As to terms of office, quorum, vacancies, qualifications, regulations and officers, see s 3.

4 Ibid s 2; Charities Act 1960, s 48, Sch. 7, Part II. The board is also thereby empowered to transfer rights of patronage, but this power is subject to the restrictions mentioned: Benefices (Diocesan Boards of Patronage) Measure 1932, s 2 proviso.

5 Ibid s 2 proviso (a). Any transfer of a right of patronage not in accordance with this is void: s 2 proviso (b). A clerical member of the board is not to take part in proceedings relating to a presentation in his favour: s 3 (9).

UPDATE

790 Diocesan boards of patronage

TEXT AND NOTES--The 1932 Measure is replaced by the Patronage (Benefices) Measure 1986 ss 26, 27, Sch 3.

NOTE 1--Section 1(4) now 1986 Measure s 26(1), which provides for the continuation of a body corporate called the diocesan board of patronage in every diocese.

TEXT AND NOTES 2, 3--1932 Measure s 1(1) now 1986 Measure Sch 3 para 1(1), except that (a) the bishop is not chairman and (b) para 1(1) refers to 'both chairmen of the deanery synod' (see PARA 533) instead of 'the rural dean'. The board must elect one of its members other than the bishop to be chairman: Sch 3 para 3.

1932 Measure s 1(2) now 1986 Measure Sch 3 para 1(1), providing for election by the method of the single transferable vote. 1932 Measure s 1(3) now 1986 Measure Sch 3 para 2. 1932 Measure s 3 replaced by 1986 Measure Sch 3 paras 4, 5, 7, 8, which deal with elections, vacancies, quorum and procedure.

NOTE 4--Section 2 and s 2 proviso now 1986 Measure s 27(1).

The board may be appointed patron of a benefice which has no registered patron; see s 25 (see PARA 783A.9).

As to the board's right to present to a void benefice, see s 28 (para 832).

NOTE 5--Section 2 proviso (a) now 1986 Measure s 27(2), (3). 1932 Measure s 2 proviso (b) now 1986 Measure s 27(4). 1932 Measure s 3(9) now 1986 Measure Sch 3 para 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/791. University patronage.

791. University patronage.

Provision has been made for the sale, under the authority of the Church Commissioners, of advowsons and rights of patronage held wholly or partly by or in trust for the Universities of Oxford, Cambridge and Durham or any of their colleges, or the head or any member of any such college, and for the purchase of advowsons by any such university or college under the same authority¹.

The Universities of Oxford and Cambridge may elect to benefices in their patronage, and may exercise any other rights which they possess in respect of them, in any way from time to time determined by them to be expedient by a university statute or ordinance made in the ordinary manner since 1st January 1899².

1 Ecclesiastical Commissioners Act 1840, ss 70, 83-87; Universities and College Estates Act 1925, ss 33 (1), 34 (1); Church Commissioners Measure 1947, s 2. Where a benefice is annexed to a headship of a college and the endowments of the benefice are sufficient, the college may charge them with payment to the head of such annual sum, not exceeding one-half of the total revenue, as in the opinion of the commissioners and of the bishop is adequate; and thereupon the advowson will be vested in the college free from any trust in favour of the head: Universities and College Estates Act 1925, s 36. Where under the statutory powers for the purpose any benefice without cure of souls, or inappropriate rectory, belonging to a university or college, and having a right of patronage attached to it, is sold or annexed, and the right of patronage is not intended to be included in the sale or annexation, it becomes thereupon severed from the benefice or rectory sold or annexed, and is vested in the university or college which was the former patron or owner of the benefice or rectory: s 33 (3). A university or college may transfer gratuitously to a bishop, dean and chapter or other ecclesiastical corporation any right of patronage belonging to the university or college: s 37.

2 Benefices Act 1898, s 7. As to the right of one or other of the universities to present where the advowson of a benefice is held by or in trust for a Roman Catholic, see PARA 782 ante.

Statutes might have been made by the governing bodies of the colleges of Atone, Winchester and Westminster, and the other public schools to which the Public Schools Act 1868 applied (as to which see EDUCATION vol 15(1) (2006 Reissue) PARA 509) with respect to the mode and conditions of appointment to any ecclesiastical benefice the patronage of which was vested in the governing body as such, or to which persons educated at or connected with the school had an exclusive or preferential claim: s 6 (5). However, this provision was repealed by the Statute Law (Repeals) Act 1973, ss 1 (1), 2, Sch. 1, Part XI, although it does not affect any statute in force immediately before the repeal took effect: Sch. 1, Part XI. As to preferential claims, see *A-G v Earl of Powis* (1853) 131 ER 186.

UPDATE

791 University patronage

NOTE 1--As from the relevant date (see PARA 610A.1), any reference in the Universities and College Estates Act 1925 s 37 to a chapter, cathedral chapter, dean and chapter or capitular body is to be construed as a reference to the corporate body of the cathedral: Cathedrals Measure 1999 ss 36(2), 38(2), (3).

1840 Act s 7 repealed: Statute Law (Repeals) Act 1977. 1840 Act s 85 repealed: Statute Law (Repeals) Act 1993. 1840 Act ss 83, 87 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/792. Patronage of cathedral and collegiate chapters.

792. Patronage of cathedral and collegiate chapters.

The chapter of a cathedral or collegiate church, unless otherwise arranged between members, exercises ecclesiastical patronage by the votes of a majority of the body, and the dean has no veto upon it¹. A cathedral scheme² must provide that any presentations or nominations to benefices in the patronage of the dean and chapter or cathedral chapter must be exercised by them in their corporate capacity or by a patronage committee³.

1 2 Burn's Ecclesiastical Law (4th Edn) 115-118; *Hascard v Somany* (1693) Freem KB 504.

2 le under the Cathedrals Measure 1963: see PARA 612 et seq ante.

3 Ibid s 10 (1) (g): see PARA 621 ante.

UPDATE

792 Patronage of cathedral and collegiate chapters

TEXT AND NOTE 3--Cathedrals Measure 1963 s 10 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/793. Patronage of ecclesiastical corporations sole.

793. Patronage of ecclesiastical corporations sole.

A spiritual person cannot sell or assign any patronage or right of presentation belonging to him by virtue of a dignity or spiritual office held by him¹.

1 Ecclesiastical Commissioners Act 1840, s 42, as explained by the Church Patronage Act 1846, s 1.

UPDATE

793 Patronage of ecclesiastical corporations sole

TEXT AND NOTES--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/794. Patronage of incumbent.

794. Patronage of incumbent.

In the absence of custom or agreement to the contrary the incumbent of a parish is, in right of his benefice, entitled to the patronage of all chapels in his parish¹.

While a benefice is under sequestration² the incumbent is incapable of presenting to any vacant benefice of which he is patron in right of the sequestered benefice, and the right of presenting to it is exercisable by the bishop of the diocese in which the vacant benefice is situate³.

¹ *A-G v Brereton* (1752) 2 Ves Sen 425 at 429; *Line v Harris* (1752) 1 Lee 146 at 156; *Dixon v Kershaw* (1766) Amb 528; *Farnworth v Bishop of Chester* (1825) 4 B & C 555 at 568, 569, per Abbott CJ. He is also, in most cases, entitled to the patronage of district chapelries formed out of his parish under the Church Building Acts (largely repealed): see PARA 788 ante.

² As to sequestration, see PARA 892 et seq post.

³ Sequestration Act 1871, s 6: see PARA 920 post.

UPDATE

794 Patronage of incumbent

TEXT AND NOTE 3--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/795. Patronage belonging to vacant benefice.

795. Patronage belonging to vacant benefice.

Where a vicarage in the patronage of the rector becomes void during a vacancy in the rectory the patron of the rectory has the right of presenting to it¹.

¹ 2 Roll Abr 346; and see PARA 770 ante, 822 post. As to the exercise by the Crown of patronage belonging to a vacant see and to a vacant benefice when the incumbent has been promoted to a see, see PARA 784 ante, 810 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/796. Patronage vested in parochial church council.

796. Patronage vested in parochial church council.

The power of presenting¹ to a benefice formerly vested in the vestry of the parish, including the case where it was vested in or in trust for the parishioners², is now in the parochial church council³.

1 'Presentation' here appears to include rights of nomination and is not to be confined to legal patronage only. As to 'nomination', see PARA 777 ante.

2 It is uncertain whether this is so where the advowson is vested in or in trust for 'parishioners' in a sense which is not synonymous with 'the vestry'.

3 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (i); *Re Lichfield Cathedral Grant, Chapel-en-le-Frith Parochial Church Council v Bagshaw* (1929) 45 TLR 583.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/797. Patronage vested in inhabitants and parishioners.

797. Patronage vested in inhabitants and parishioners.

Where an advowson is held in trust for the inhabitants and parishioners of a particular place¹ the majority of the electors are entitled to nominate the minister, and the trustees must present the electors' nominee² if on other grounds the election is valid³.

Where the right of election is vested in the parishioners the question whether they must also be ratepayers may be determined by usage⁴. Where the ratepayers are the electors, only those who have actually paid rates may vote⁵.

In the election by parishioners of a vicar, Jews are entitled to vote but Roman Catholics are not⁶.

1 For the meaning of 'parishioners' and 'inhabitants', see PARA 561 ante; *A-G v Parker* (1747) 3 Atk 576 at 577; *Fearon v Webb* (1802) 14 Ves 13 at 24; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 104.

2 *A-G v Parker* (1747) 3 Atk 576; *Fearon v Webb* (1802) 14 Ves 13; *A-G v Rutter, Sellon v Nicholls* (1768) 2 Russ 101n; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 104, 105. As to the proper remedy when trustees refuse to present, see *R v Orton Vicarage Trustees* (1849) 14 QB 139. The presentation of a minister improperly elected may be restrained by injunction: *Carter v Copley* (1857) 26 LJ Ch 246 at 256; see also *A-G v Forster* (1804) 10 Ves 335 at 341; *A-G v Earl of Powis* (1853) Kay 186 at 230.

3 *A-G v Cuming* (1843) 2 Y & C Ch Cas 139 at 151. Decisions on the right have been given in the cases of Sandford, Lincolnshire (*A-G v Davy* (1741) 2 Atk 212); Clerkenwell (*A-G v Parker* (1747) 3 Atk 576; *A-G v Rutter* (1768) 2 Russ 101n; *A-G v Forster* (1804) 10 Ves 335; *A-G v Newcombe* (1807) 14 Ves 1; *Shaw v Thompson* (1876) 3 Ch D 233); Leeds (*A-G v Scott* (1750) 1 Ves Sen 413; *Wilson v Kirshaw* (1750) 7 Bro Parl Cas 296); Painswick (*Fearon v Webb* (1802) 14 Ves 13); Willenhall (*R v Marquis of Stafford* (1790) 3 Term Rep 646; *A-G v Marquis of Stafford* (1796) 3 Ves 77); Sandford, Devon (*R v Davie* (1837) 6 Ad & El 374); and Orton (*R v Orton Vicarage Trustees* (1849) 14 QB 139). Where an advowson is vested in the master and brethren of an eleemosynary hospital the majority are entitled to present and the master has no veto: *R v Kendall* (1841) 1 QB 366.

4 *A-G v Parker* (1747) 3 Atk 576 at 577; *A-G v Forster* (1804) 10 Ves 335 at 338; *A-G v Newcombe* (1807) 14 Ves 1; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 107. See also *Faulkner v Elger* (1825) 4 B & C 449.

5 *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 110, 111; cf. on the other hand *A-G v Forster* (1804) 10 Ves 335 at 339.

6 *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 at 111n; Roman Catholic Relief Act 1926, s 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/798. Election of minister by inhabitants and parishioners.

798. Election of minister by inhabitants and parishioners.

Inhabitants and parishioners who have the right of nominating a minister may by common consent bind themselves to a particular mode of election¹. Elections by parishioners may be by ballot², but voting by proxy is not allowed unless authorised by the trust deed³. Nomination to a perpetual curacy⁴ might be made by parol⁵. The right of nominating a minister which was vested in parishioners of parishes in Greater London is not transferred to London borough councils⁶.

1 *A-G v Newcombe* (1807) 14 Ves 1 at 10.

2 *Shaw v Thompson* (1876) 3 ChD 233; see also *Faulkner v Elger* (1825) 4 B & C 449; *Edenborough v Archbishop of Canterbury* (1826) 2 Russ 93 (where it was held that such elections must be by open polling). As to when the court will interfere to set aside an irregular election, see *Davies v Banks* (1836) 5 LJ Ch 274; *R v Rector of Lambeth* (1838) 3 Nev & PKB 416; *Shaw v Thompson* supra at 251.

3 *A-G v Scott* (1750) 1 Ves Sen 413 at 418. The rule is different with regard to signing presentation: *A-G v Scott* supra. As to proxies, see also *Howard v Hill* (1888) 37 WR 219.

4 As to the transformation of perpetual curacies into vicarages by the Pastoral Measure 1968, s 87, see PARA 771 ante.

5 *A-G v Brereton* (1752) 2 Ves Sen 425 at 429.

6 *Carter v Copley* (1857) 26 LJ Ch 246. See also *A-G v Drapers' Co* (1858) 27 LJ Ch 542; *Re Hayle's Estate* (1862) 31 LJ Ch 612. See generally LONDON GOVERNMENT.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/799. Sale of advowsons vested in inhabitants.

799. Sale of advowsons vested in inhabitants.

The owners of an advowson vested in, or in trustees for, inhabitants, ratepayers, freeholders or other persons forming a numerous class deriving no pecuniary advantage from it may, in certain circumstances, direct a sale of the advowson¹. Such a sale is subject to substantial restrictions², and the power to sell for valuable consideration is obsolescent³.

1 Sale of Advowsons Act 1856, ss 1-8.

2 See PARAS 802, 803 post.

3 See the Benefices Act 1898 (Amendment) Measure 1923, and PARA 804 post.

UPDATE

799 Sale of advowsons vested in inhabitants

TEXT AND NOTES--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/800. Trustee patrons in perpetuity.

800. Trustee patrons in perpetuity.

An advowson or right of patronage of a benefice may be held by trustees in perpetuity and without power of alienation¹, whether or not a trust is expressed or beneficiaries are named². If no trust is expressed nor beneficiaries named, or if a trust is declared simply to present a fit person to the benefice, which is the legal duty of all patrons, the trust is not a charitable trust³. The trust is charitable, however, if the advowson is given to trustees for the benefit of a charity⁴, or if the trustees are to present a clergyman elected by the parishioners or some other class of persons⁵, or a clergyman holding special opinions in the interest of a particular school of thought in the church⁶. In the absence of any provision to the contrary all the trustees must present⁷ unless they are a corporation, in which case the majority may select the presentee without using the corporate seal⁸, but a power for the majority to present may be contained in the instrument creating or regulating the trust⁹. In the absence of a provision to the contrary in the instrument of trust the survivors or survivor of the trustees may present¹⁰.

1 *A-G v Floyer* (1716) 2 Vern 748; *Foley v A-G* (1721) 7 Bro Parl Cas 249 at 254.

2 *Foley v A-G* (1721) 7 Bro Parl Cas 249; *A-G v Scott* (1750) 1 Ves Sen 413; *A-G v Bishop of Litchfield* (1801) 5 Ves 825; *A-G v Lawson* (1866) 36 LJ Ch 130.

3 *Re Church Patronage Trust, Laurie v A-G* [1904] 1 Ch 41; affd. [1904] 2 Ch 643, CA; but a trust to present a fit and proper person duly qualified according to law has been held to require more than the mere presentation of a legally qualified person: *A-G v Earl of Powis* (1853) Kay 186 at 212, 213, per Page Wood V-C.

4 *A-G v Ward* (1829) 7 LJOs Ch 114; *Re Shrewsbury School* (1836) 1 My & Cr 632.

5 *Re St Stephen, Coleman Street, Re St Mary the Virgin, Aldermanbury* (1888) 39 ChD 492. In such cases notice of a meeting to elect must be given to all electors: *A-G v Scott* (1750) 1 Ves Sen 413; *A-G v Cuming* (1843) 2 Y & C Ch Cas 139; and see PARA 796 text to note 3 ante.

6 *Re Hunter, Hood v A-G* [1897] 2 Ch 105, CA (revsd. on other grounds sub nom. *Hunter v A-G* [1899] AC 309, HL); *Re Church Patronage Trust, Laurie v A-G* [1904] 1 Ch 41; affd. [1904] 2 Ch 643 at 652, 654, 655, CA.

7 *A-G v Scott* (1750) 1 Ves Sen 413; and see *Seymour v Bennet* (1742) 2 Atk 482 at 483. The presentation will be sustained where one trustee dissents (*A-G v Cuming* (1843) 2 Y & C Ch Cas 139) or is incapable of assenting (*A-G v Lawson* (1866) 36 LJ Ch 130). A majority cannot present without consulting all the others who are capable of acting: *A-G v Lawson* supra at 134, per Kindersley V-C.

8 *A-G v Davy* (1741) 2 Atk 212. The presentation ought to be under the common seal: Bro Abr, Corporation (83).

9 *Foley v A-G* (1721) 7 Bro Parl Cas 249 at 244.

10 *A-G v Bishop of Litchfield* (1801) 5 Ves 825, where the surviving trustee's heir was also held entitled to present; *A-G v Lawson* (1866) 36 LJ Ch 130. The number of trustees ought to be kept filled up: *A-G v Bishop of Litchfield* (1801) 5 Ves 825; *Davis v Jenkins* (1814) 3 Ves & B 151 at 159. As to failure to appoint, see *Hopper v St John's College, Cambridge* (1914) 31 TLR 139.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(i) Advowsons and Rights of Patronage/D. PATRONAGE OF CORPORATIONS AND TRUSTEES/801. Substitution of one bishop for another as trustee.

801. Substitution of one bishop for another as trustee.

Where the bishop of a diocese as such, either alone or jointly with one or more other persons, is trustee of or is invested with the power of exercising the patronage of any church and benefice which, when he or his predecessor was first invested with the trust or power, were within the diocese, but owing to an alteration of the limits of the diocese have since become included in another diocese, the Charity Commissioners, under their common seal, with the consent of the Church Commissioners, may make an order substituting for such bishop, in respect of the trust or power, the bishop of the diocese in which the church and benefice have become included¹.

¹ Bishops Trusts Substitution Act 1858, ss 1, 2; Church Commissioners Measure 1947, s 2. Special provision for this event is now usually made in Measures constituting new dioceses.

UPDATE

801 Substitution of one bishop for another as trustee

TEXT AND NOTES--1858 Act s 1 amended: Charities Act 2006 s 75, Sch 8 para 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/802. Transfer of patronage.

(ii) Transfer and Transmissions of Patronage

802. Transfer of patronage.

An advowson or right of patronage is transferable or transmissible by conveyance or devise or by operation of law in the same manner as other incorporeal hereditaments¹, but is subject to the following restrictions²: (1) the transfer³ must be registered in the prescribed manner⁴ in the diocesan registry within one month from the date of transfer or within such extended time as the bishop under special circumstances thinks fit to allow⁵; (2) it must transfer the whole interest of the transferor in the advowson or right of patronage, except that in a family settlement a life interest may be reserved to the settlor⁶; and (3) except in the case of an advowson to be sold in conjunction with a manor or with an estate in land of not less than 100 acres situate in the parish in which the benefice is situate, or in an adjoining parish and belonging to the same owner as the advowson, a right of patronage cannot be offered for sale by public auction⁷.

The following agreements are also invalid: (a) an agreement for the exercise of a right of patronage in favour of or on the nomination of a particular person, and (b) an agreement on or in connection with the transfer of a right of patronage (i) for the retransfer of the right; (ii) for postponing payment of any part of the consideration of the transfer until a vacancy in the benefice or for more than three months; (iii) for payment of interest until a vacancy or for more than three months; (iv) for any payment in respect of the date at which a vacancy occurs; and (v) for the resignation of a benefice in favour of any person⁸.

The advowson of a benefice may be legally transferred when the incumbent is in extremis if an intended presentee is not privy to the transfer⁹.

The right of patronage of a guild church¹⁰ may be transferred in the same way as the right of patronage of a benefice although it may not be sold¹¹. Unless he is himself the patron the bishop's consent is required¹².

With the consent of the patron or patrons concerned, a pastoral scheme¹³ may provide for the exchange or transfer of the rights of patronage of any benefice or church, whether or not that benefice or church is otherwise affected by the scheme¹⁴.

1 Co Litt 17b, 332a, 335b; Com Dig, Advowson (C1); *Pannell v Hodgson* (1576) Cary 52; *Holdsworth v Fairfax* (1834) 3 Cl & Fin 115, HL. See PARA 776 ante.

2 As to the transferor's obligations and notice of objections by the parochial church council, see PARA 803 post. Special restrictions lie under the Benefices (Diocesan Boards of Patronage) Measure 1932, s 2, where the transferor is a diocesan board of patronage: see PARA 790 ante. A further restriction requiring the lapse of twelve months since the last institution or admission to a benefice no longer applies: Benefices Act 1898, s 1 (1) (c) (repealed).

3 'Transfer' includes any conveyance or assurance passing or creating a legal or equitable interest inter vivos and any agreement for such a conveyance or assurance, but does not include a transmission on marriage, death or bankruptcy, or otherwise by operation of law, nor a transfer on the appointment of a new trustee where no beneficial interest passes: *ibid* s 1 (6). The power to mortgage has been abolished: see note 7 infra.

4 See the Benefices Rules 1926, S.R. & O. 1926 No. 357, r 5; Benefices (Purchase of Rights of Patronage) Rules 1933, S.R. & O. 1933 No. 1148, r 1. The register must include a note of the price, if any, paid for the interest transferred and the application for registration must state the price: Benefices (Purchase of Rights of Patronage) Measure 1933, s 6 (1). A duplicate of the entry in the register must be sent by the registrar to the

parochial church council within fourteen days: s 6 (2). This Measure is obsolescent since the coming into force of the Pastoral Measure 1968; see PARA 805 post.

5 Benefices Act 1898, s 1 (1) (a).

6 Benefices Act 1898 (Amendment) Measure 1923, s 4.

7 Benefices Act 1898, s 1 (2). A person who offers a right of patronage for sale by auction in contravention of this restriction, or who bids at any such sale, is liable on summary conviction to a fine not exceeding £100: s 1 (2). The power to mortgage is in effect taken away by the Benefices Act 1898 (Amendment) Measure 1923, s 4.

8 Benefices Act 1898, s 1 (3).

9 See PARA 833 post.

10 As to guild churches, see PARA 597 et seq ante.

11 City of London (Guild Churches) Act 1960, s 6 (1). The right was formerly incapable of transfer: City of London (Guild Churches) Act 1952, s 11 (repealed).

12 City of London (Guild Churches) Act 1960, s 6 (2). The provisions of the Benefices (Transfer of Rights of Patronage) Measure 1930 (as to which see PARA 803 post) are applied to guild churches by the City of London (Guild Churches) Act 1960, s 6 (3). The provisions of the Ecclesiastical Commissioners Act 1840, s 73; Ecclesiastical Commissioners Act 1841, s 22; Ecclesiastical Commissioners (Exchange of Patronage) Act 1853, ss 1-4; Ecclesiastical Commissioners Act 1860, s 42; and Ecclesiastical Commission Act 1868, s 12, while it appears desirable to the Church Commissioners that the patronage be transferred, are applied to guild churches by the City of London (Guild Churches) Act 1960, s 6 (4), (5). As to the Acts, see PARA 809 post.

13 As to pastoral schemes, see PARA 856 et seq post. By the Pastoral Measure 1968, s 32 (10), Sch. 3 para 5 (1), a vesting, exchange or transfer of rights of patronage by or under a pastoral scheme is not a transfer of those rights for the purpose of the Benefices (Transfer of Rights of Patronage) Measure 1930: see PARA 803 ante.

14 Pastoral Measure 1968, s 32 (1).

UPDATE

802 Transfer of patronage

TEXT AND NOTES 1-8--Replaced by the Patronage (Benefices) Measure 1986 s 3 (see PARA 802A). As to the transfer of advowsons held on trust for sale or comprised in settled land, see s 33 (PARA 802B).

Maximum fine now level 3 on the standard scale: Criminal Justice Act 1982 ss 38, 46. As to the standard scale, see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

NOTE 12--1930 Measure is repealed except as applied by the 1960 Act s 6(3): 1986 Measure Sch 5. 1840 Act s 73, 1841 Act s 22, 1853 Act, 1860 Act s 42 and 1868 Act s 12 repealed: 1986 Measure Sch 5. 1960 Act s 6(4), (5) repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 13, 14--This power is also exercisable by pastoral order: Pastoral Measure 1983 ss 32(1), 37(1)(i) (as renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTE 13--1968 Measure s 32(10), Sch 3 para 5, consolidated in Pastoral Measure 1983 s 32(10), Sch 3 para 6, repealed: 1986 Measure Sch 5.

TEXT AND NOTE 14--Now 1983 Measure s 32(1); 1986 Measure s 29(1), substituting 'registered patron' for 'patron'. As to 'registered patrons', see 1983 Measure s 87(1) (see PARA 872).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/802A. Transfer of rights of patronage.

802A. Transfer of rights of patronage.

A right of patronage of a benefice¹ is incapable of sale and any transfer² of it for valuable consideration is void³.

A right of patronage vested in an ecclesiastical corporation⁴ may not be transferred to any body or person unless (a) the consent of the bishop⁵ or, if the bishop is the proposed transferor, the consent of the archbishop⁶ has been obtained or (b) the transfer is made by a pastoral scheme⁷ or order⁸.

Where a right of patronage of a benefice is proposed to be transferred other than by a pastoral scheme or order, the proposed transferor must send to the bishop (or, if the bishop is the proposed transferor, to the archbishop) and to the registrar of the diocese a notice⁹ in the prescribed form stating (a) his intention to transfer that right, (b) the name and address of the proposed transferee and (c) the particulars of the terms of the proposed transfer¹⁰. On receiving such a notice, the registrar must send to the secretary of the parochial church council of the parish concerned a notice¹¹ in the prescribed form informing him of the proposed transfer and stating that, before the expiration of the period of one month beginning with the date on which the notice is sent to him, representations with respect to the proposed transfer may be made to the registrar by the parochial church council¹². The registrar must notify the bishop and the proposed transferor or, if the bishop is the proposed transferor, the bishop and the archbishop, of any representations made to him within the one-month period¹³. After the expiration of the one-month period, the bishop or, if the bishop is the proposed transferor, the archbishop must consider any representations made under the foregoing provision¹⁴. Whether or not any such representations have been made, the bishop or archbishop may request the proposed transferor (either personally or through some person appointed by the proposed transferor) to confer with him (or with some person appointed by the bishop or archbishop) as to the proposed transfer¹⁵.

Any transfer of a right of patronage other than by a pastoral scheme or order must be in the prescribed form¹⁶.

Where a right of patronage of a benefice is transferred other than by a pastoral scheme or order, the registrar must not register the transferee as a patron of that benefice unless (a) he is satisfied that the requirements of these provisions have been complied with and (b) an application¹⁷ for registration is made before the expiration of 12 months from the date of the execution of the transfer¹⁸.

A transfer of a right of patronage of a benefice may not take effect during the period of a vacancy in that benefice¹⁹.

Where a right of patronage of a benefice is proposed to be transferred to Her Majesty or to the possessor for the time being of the Duchy of Cornwall, the foregoing provisions²⁰ do not apply but the transferor must send a notice to the registrar to inform him of the transfer and the registrar must notify Her Majesty or the possessor of the Duchy of Cornwall that he proposes to register Her Majesty or the possessor of the Duchy of Cornwall as patron of that benefice²¹.

Where a right of patronage in a Crown benefice²² is transferred to any person other than Her Majesty or the Duke of Cornwall, the registrar must not register the transferee as patron of the benefice unless the application for transfer is made in accordance with prescribed provisions²³.

before the expiration of the period of 12 months beginning with the date of execution of the transfer²⁴.

1 See PARA 783A.1.

2 'Transfer' means a transfer inter vivos including a transfer by way of exchange; it does not include a transfer by operation of law, a transfer on the appointment of a new trustee or a transfer by the personal representatives of a deceased person: Patronage (Benefices) Measure 1986 s 3(9); Church of England (Miscellaneous Provisions) Measure 2000 s 17(b).

3 1986 Measure s 3(1). This also applies to the transfer of a right of patronage of a Crown benefice (see PARA 783A.10): s 35(6).

4 See PARA 1253.

5 'Bishop' means the bishop of the diocese concerned: 1986 Measure s 39(1).

6 'Archbishop' means the archbishop of the province in which the benefice (see PARA 783A.1) is or, where the benefice is in the diocese of the archbishop of that province or the archbishopric of that province is vacant or the archbishop is the patron of that benefice, the archbishop of the other province: *ibid* s 39(1).

7 As to pastoral schemes and orders, see PARA 856 et seq.

8 1986 Measure s 3(2). As to the form of bishop's consent to the transfer of patronage by an ecclesiastical corporation, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 10.

9 As to the prescribed form, see *ibid* Form 8.

10 1986 Measure s 3(3).

11 As to the prescribed form, see the 1987 Rules Form 9.

12 1986 Measure s 3(4).

13 *Ibid* s 3(4).

14 *Ibid* s 3(5).

15 *Ibid* s 3(5). The bishop or archbishop may not give any consent required under s 3 until after any such representations have been considered and any such request has been complied with: s 3(5). As to the form of bishop's certificate that the requirements as to the transfer of patronage have been complied with, see the 1987 Rules Form 11.

16 1986 Measure s 3(6). As to the prescribed forms, see the 1987 Rules Forms 12 (transfer of patronage inter vivos and application to be registered as patron), 13 (transfer of patronage on the appointment of new trustees), 14 (transfer of patronage by personal representatives). As to the registration of transfers, see further r 7 (PARA 783A.3).

17 *Ie* an application made in accordance with the 1986 Measure Sch 1.

18 *Ibid* s 3(7). If no such application for registration is made before the expiration of 12 months the transfer is of no effect: s 3(7).

19 *Ibid* s 3(8); Church of England (Miscellaneous Provisions) Measure 2000 s 17(a). As to 'suspension period', see the Pastoral Measure 1983 s 67 (see PARA 813).

20 *Ie* 1986 Measure s 3(2)-(7).

21 *Ibid* s 35(5).

22 See PARA 783A.10.

23 *Ie* 1986 Measure Sch 1.

24 *Ibid* s 35(4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/802B. Transfer of advowsons held on trust for sale.

802B. Transfer of advowsons held on trust for sale.

Where any advowson is subject to a trust of land, it is lawful for the trustees to transfer the advowson gratuitously to any person who has agreed to accept it and (a) being an individual (i) is an ecclesiastical corporation sole¹ or (ii) is an actual communicant member of the Church of England² or (b) being a body of persons, corporate or unincorporate (i) is one of certain specified bodies³ or (ii) has the furtherance of the work of the Church of England as one of its objects⁴.

The tenant for life of settled land may make a grant in fee simple of any advowson comprised in the settled land gratuitously to any such person as is referred to in this provision⁵.

Nothing in any local Act or trust deed prevents the transfer inter vivos by trustees of an advowson which is the subject of a trust⁶.

1 See PARA 1254.

2 See PARA 818A.2.

3 Ie the bodies mentioned in the Patronage (Benefices) Measure 1986 s 8(7) (see PARA 818A.2).

4 Ibid s 33(1); Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 24(a). Where the consent of any person is by any instrument containing such a trust, or by any statutory provision, made requisite to the execution of the trust, then, subject to s 10 (consents: see TRUSTS vol 48 (2007 Reissue) PARA 1036), the trustees must obtain the consent of that person to the execution of a transfer made lawful by the 1986 Measure s 33(1): s 33(2); 1996 Act Sch 3 para 24(b).

5 1986 Measure s 33(3). Section 33(3) is construed as one with the Settled Land Act 1925 and that Act applies as if the power conferred by the 1986 Measure s 33(3) had been conferred by the 1925 Act: s 33(4).

6 Ibid s 33(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/803. Obligations of intending transferor.

803. Obligations of intending transferor.

A patron intending to transfer¹ his advowson or right of patronage must notify to the bishop his intention or desire to transfer, the name and address of the proposed transferee and particulars of the terms of the proposed transfer; and must also, if the bishop within twenty-one days after such notification so requires, confer with the bishop or some person appointed by him². The bishop must within one month give notice with particulars to the churchwardens and the secretary of the parochial church council inviting objections by the council to the proposed transfer within fourteen days, and if such objections are made he must communicate them to the patron³. Where a bishop, as patron, proposes to transfer, he must send notice to the churchwardens and to the secretary of the parochial church council⁴.

No transfer may be registered unless one month has elapsed since the sending of the notice to the churchwardens and until the transferor has complied with these obligations⁵.

1 'Transfer' has the same meaning as in the Benefices Act 1898, as to which see PARA 802 note 3 ante: Benefices (Transfer of Rights of Patronage) Measure 1930, s 7.

2 Ibid s 1.

3 Ibid s 2. The churchwardens must cause the notice to be fixed on the principal door or notice board of the church or chapel and take such other step as they think expedient for giving it publicity; if there is more than one church or chapel in the benefice the bishop determines where the notice shall be fixed: s 5.

4 Ibid s 4 (i). As to the churchwardens' duties in regard to the notice, see note 3 supra. If requested, the bishop must confer with the council: s 4 (ii).

5 Ibid s 3. A statement in writing signed by the bishop to the effect that the provisions of the Measure have been complied with is sufficient evidence of compliance: s 6.

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/804. Patronage rights incapable of sale.

804. Patronage rights incapable of sale.

A right of patronage (including a right of nomination¹) to a benefice is incapable of sale after the occurrence of two vacancies in the benefice subsequent to 14th July 1924, and after two such vacancies a transfer of such a right for valuable consideration is invalid². This does not apply to assignments of patronage under the New Parishes Acts³ or to sales of land to which rights of patronage are appendant⁴.

Any right of patronage created by or under the Pastoral Measure 1968 is incapable of sale and any transfer of such a right for valuable consideration is void⁵.

A person entitled for his own benefit in fee simple or fee tail in possession, whether for a legal or equitable estate, to a right of patronage may, by declaration under seal registered in the diocesan registry, declare his intention that the right of patronage be thenceforth without power of sale and from the date of registration the right then becomes incapable of sale⁶.

1 Benefices Act 1898 (Amendment) Measure 1923, s 6.

2 Ibid s 1.

3 See the New Parishes Act 1843, s 20; New Parishes Act 1856, ss 16-19. Although these Acts have been largely repealed by the New Parishes Measure 1943, s 32, it would seem that the rights of assignment under these repealed sections have been saved by s 32 (1) (b).

4 Benefices Act 1898 (Amendment) Measure 1923, s 1 proviso.

5 Pastoral Measure 1968, s 32 (10), Sch. 3 para 5 (3). As to pastoral schemes, see PARA 856 et seq post. The position was the same with regard to rights of patronage created under the New Parishes Measure 1943, ss 9-11 (repealed), and the Reorganisation Areas Measure 1944, ss 10-14 (repealed).

6 Benefices Act 1898 (Amendment) Measure 1923, s 2. All enactments dealing with rights of patronage have effect only so far as they are not inconsistent with this Measure: s 7.

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/805. Compulsory purchase of patronage.

805. Compulsory purchase of patronage.

Where a transfer of a right of patronage has been registered¹ since 14th July 1924, and at the date of registration two vacancies of the benefice subsequent to 14th July 1924 have not occurred, the parochial church council may pass a provisional resolution for the purchase of the patronage². The provisional resolution must be passed within three years after the registration of the transfer and confirmed, within three months of being passed, by a confirmatory resolution passed at a special or extraordinary parochial church meeting³. Within fourteen days of the passing of the confirmatory resolution the council must notify the patron and the diocesan board of patronage⁴ that it has resolved to purchase⁵, and this 'original notice' must contain an offer to purchase at a named price⁶. If within three months of the original notice no agreement is reached for the sale and purchase the council may within one month notify the patron that it refers the matter to arbitration⁷. The price to be paid on the proposed purchase is awarded by an arbitrator selected from a panel of three persons appointed by the Church Commissioners with the approval of the Lord Chancellor or, if the parties cannot agree as to that arbitrator, selected by the bishop⁸. The arbitrator sends his award to the council, and a copy to the patron⁹, and by his award must certify the price to be paid by the council¹⁰, which must not be less than the price named in the original notice, and must be such as the arbitrator considers equitable after taking all the circumstances of the case into consideration, including any price paid on any registered since 14th July 1924¹¹. If the price awarded is not more than that named in the original notice, then that notice and the award constitute a binding contract for sale between the patron and the council as from the date of the original notice and at the price named in the award¹². If the price awarded is more than that named in the original notice and the council sends the patron within six months of the award a final notice stating that it desires to proceed with the purchase, then the original notice, the award and the final notice constitute a binding contract for sale as from the date of the original notice and at the price named in the award¹³.

1 All transfers inter vivos must be registered: see PARA 802 ante.

2 Benefices (Purchase of Rights of Patronage) Measure 1933, s 2. It would seem that this Measure is obsolescent since the coming into force of the Pastoral Measure 1968 on 1st April 1969 (see s 96 (3) and the London Gazette dated 7th February 1969), as rights of patronage created under the Measure are unsaleable: s 32 (10), Sch. 3 para 5 (3). See also PARA 804 ante.

3 Benefices (Purchase of Rights of Patronage) Measure 1933, s 2 proviso. As to special and extraordinary meetings, see PARA 588 ante.

4 See *ibid* s 1 (vii), and PARA 790 ante. As to notices, see s 7.

5 *Ibid* s 3 (i).

6 *Ibid* s 3 (ii). For the form of notice, see Sch. 1, Form 1.

7 *Ibid* s 3 (iii). For the form of notice, see Sch. 1, Form 2. Time limits may be extended by the bishop: s 3 (xii). The council must at the time of giving the notice of arbitration pay the diocesan registrar a prescribed deposit on account of the price eventually awarded: s 3 (iii). As to investment of the deposit by the registrar and payments which he is authorised to make, see the Benefices (Purchase of Rights of Patronage) Rules 1933, S.R. & O. 1933 No. 1148, rr 4, 7-9.

8 Benefices (Purchase of Rights of Patronage) Measure 1933, s 3 (iv), Sch. 2, r 1; Church Commissioners Measure 1947, s 2.

9 Benefices (Purchase of Rights of Patronage) Measure 1933, s 3 (iv).

10 Ibid Sch. 2, r 2.

11 Ibid Sch. 2, r 3.

12 Ibid s 3 (v).

13 Ibid s 3 (vi). For the form of final notice, see Sch. 1, Form 3. The binding contracts referred to in s 3 (v), (vi), do not require registration as a transfer: s 3 (vii). If no final notice is given by the council within six calendar months from the date of the award, it must pay the patron his costs and expenses as certified by the arbitrator: s 3 (x). These may be paid out of the sum deposited with the registrar: Benefices (Purchase of Rights of Patronage) Rules 1933, r 7.

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/806. Vesting of patronage in board.

806. Vesting of patronage in board.

When under the foregoing provisions a binding contract of sale has thus been constituted the patron must, upon payment to him or the person entitled to give a valid receipt of the purchase money and his costs and expenses as certified by the arbitrator's award, and his costs of deducing his title and of conveying the patronage, convey the right of patronage to the diocesan board of patronage¹.

¹ Benefices (Purchase of Rights of Patronage) Measure 1933, s 3 (vii). As to the board's rights, see s 3 (ix). As to forms of conveyance and their operation, see s 3 (viii), Sch. 3. A patron may sell or convey under the Measure notwithstanding any restriction on the sale of the right of patronage: s 3 (xi). As to costs allowable and taxation, see s 3 (vii), (xiii); Benefices (Purchase of Rights of Patronage) Rules 1933, S.R. & O. 1933 No. 1148, r 6. As to the case of vacancy in a benefice before transfer to the board, see the Benefices (Purchase of Rights of Patronage) Measure 1933, s 4. See also PARA 805 note 2 ante.

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/807. Ancillary benefices.

807. Ancillary benefices.

Special provisions apply where a transfer has been made of the patronage of a benefice (called 'the principal benefice'¹) the incumbent of which is in virtue of his benefice the patron of another benefice² (called 'the ancillary benefice'³). In such a case the consent of the patrons of both benefices is necessary to the purchase of the patronage of the ancillary benefice by agreement⁴, and the notices required by the foregoing provisions⁵ must be sent to both patrons⁶, except in regard to an original notice, in which case it is sufficient to notify the principal patron of the offer contained in the notice sent to the ancillary patron⁷. When the patronage of an ancillary benefice has been purchased the purchase money must be paid to the Church Commissioners as part of the endowment of the principal benefice⁸, and where the council of a parish having the principal benefice decides to avail itself of the foregoing provisions the council of the parish having the ancillary benefice may require that the patronage of that benefice may be vested in the principal patron⁹.

1 Benefices (Purchase of Rights of Patronage) Measure 1933, s 1 (iii). See also PARA 805 note 2 ante.

2 Ibid s 5.

3 Ibid s 1 (iii).

4 Ibid s 5 (1) proviso (i).

5 See PARA 805 ante.

6 Benefices (Purchase of Rights of Patronage) Measure 1933, s 5 (1) proviso (ii).

7 Ibid ss 3 (ii), 5 (1) proviso (ii).

8 Ibid s 5 (2); Church Commissioners Measure 1947, s 2.

9 Benefices (Purchase of Rights of Patronage) Measure 1933, s 5 (3).

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/808. Exceptions to compulsory purchase provisions.

808. Exceptions to compulsory purchase provisions.

The foregoing provisions do not apply to the patronage of the Crown, the duchies of Lancaster or Cornwall, the Greenwich Hospital patronage of the Admiralty, or patronage of an archbishop, bishop, dean or dean and chapter¹. Similarly exempt are rights of patronage in benefices ancillary to any benefice of which the right of patronage is held by the Crown or otherwise as previously mentioned²; and a right of patronage sold on the occasion of the last transfer in conjunction with any manor, or with an estate in land of not less than 100 acres situate in the parish in which the benefice is situate or in an adjoining parish and belonging to the same owner as the right of patronage³.

1 Benefices (Purchase of Rights of Patronage) Measure 1933, s 9 (i). See also PARA 805 note 2 ante.

2 Ibid s 9 (ii).

3 Ibid s 9 (iii).

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/809. Exchange, transfer or alteration of patronage.

809. Exchange, transfer or alteration of patronage.

An exchange or transfer of advowsons, or alterations in the exercise of patronage of benefices, with a view either to improve the value or make better provision for the spiritual duties of ill-endowed parishes or districts, or to make better provision for the cure of souls in the benefices affected by the transaction, may be effected by schemes of the Church Commissioners ratified by Order in Council with the consent of the patrons and of the bishop of the diocese, or of each diocese if the benefices lie in different dioceses, and, where the bishop is himself one of the patrons, of the archbishop of the province¹.

Generally, the Queen, as regards patronage vested in her in right of the Crown or in right of the Duchy of Lancaster or the Duchy of Cornwall, and any archbishop or other ecclesiastical corporation, sole or aggregate, and any other corporation, and the head or governing body of any college or collegiate establishment or hospital, entitled in his or their corporate capacity to any patronage, may give and take, by way of exchange, advowsons and ecclesiastical patronage, by means of a scheme of the commissioners ratified by Order in Council². Where the patronage of a benefice is given in exchange by the Crown, the benefice taken in exchange follows the course of patronage of the benefice so given in exchange³.

¹ Ecclesiastical Commissioners Act 1840, ss 73, 83-87; Ecclesiastical Commissioners Act 1841, s 22; Ecclesiastical Commissioners Act 1868, s 12; Church Patronage Act 1870, s 1; Church Commissioners Act 1947, s 2; Charities Act 1960, s 48 (2), Sch. 7, Part II. The patronage may be transferred from or to an ecclesiastical corporation aggregate or sole: Ecclesiastical Commissioners Act 1841, s 22; Church Patronage Act 1870; Charities Act 1960, s 48 (2), Sch. 7, Part II. During the vacancy of a see, the consent of a bishop or archbishop required by the Ecclesiastical Commissioners Act 1840, s 73, may be given by the guardian of the spiritualities: Vacancies in Sees Measure 1959, s 1. As to this guardian, see PARA 489 ante.

² Ecclesiastical Commissioners (Exchange of Patronage) Act 1853; Ecclesiastical Commissioners Act 1860, s 42.

³ Ecclesiastical Commissioners (Exchange of Patronage) Act 1853, s 4.

UPDATE

803-809 Obligations of intending transferor ... Exchange, transfer or alteration of patronage

Repealed: Patronage (Benefices) Measure 1986 Sch 5. As to the transfer of rights of patronage, see s 3 (see PARA 802A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(ii) Transfer and Transmissions of Patronage/810. Right of presentation when benefice becomes vacant.

810. Right of presentation when benefice becomes vacant.

When a benefice becomes vacant the right of presentation to it is said to be fallen. It has become a personal right or chattel, disannexed from the advowson¹. It cannot be alienated², but must be exercised by the person who was patron at the time when it fell, or by that person's personal representatives³. Consequently it does not pass by a transfer of the patronage which is not completed before the avoidance of the benefice⁴.

1 *Stephens v Wall* (1569) 3 Dyer 282b at 283a; *Gorge v Bishop of Lincoln* (1587) Owen 53; *R v Fane* (1589) 4 Leon 107 at 109; *Baker v Rogers* (1600) Cro Eliz 788; *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 256, HL; *Alston v Atlay* (1837) 7 Ad & El 289 at 293, 311, 312, Ex Ch.

2 *Baker v Rogers* (1600) Cro Eliz 788; *Bishop of Lincoln v Wolforstan* (1764) 3 Burr 1504 at 1510, 1512, Ex Ch.

3 *Stephens v Wall* (1569) 3 Dyer 282b; *Gorge v Bishop of Lincoln* (1587) Owen 53; *R v Fane* (1589) 4 Leon 107; *Repington v Governors of Tamworth School and Collins* (1763) 2 Wils 150; *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 318, HL. The rights of the Sovereign, upon the death of a bishop or a tenant in capite of the Crown, to present to a benefice in her patronage as bishop, or as such tenant in capite, which has fallen vacant previously to his death, are exceptions to the rule, arising out of the royal prerogative: see *Mirehouse v Rennell* supra at 258, 259, 318, 319.

4 *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 319, HL; *Alston v Atlay* (1837) 7 Ad & El 289, Ex Ch. If a vicarage in the patronage of the rector becomes vacant and the rector, before he presents, is made a bishop or otherwise vacates the rectory by cession, he retains the right of presentation for that turn: Fitz Nat Brev 34, N. If a prebendary, entitled in right of his prebend to the advowson of a benefice, dies while the benefice is vacant the right to present belongs to his personal representatives: *Mirehouse v Rennell* (1833) 7 Bli NS 241, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/811. In general.

(iii) Restrictions on Exercise of Patronage

811. In general.

In the years following the second world war a fall in the value of the incomes of most benefices and the shortage of clergy made it necessary to reorganise some benefices and to prevent others from being filled, in order that the best pastoral use might be made of the money and clergy available. For these reasons extensive restrictions on the right of patrons to present clergymen to benefices were introduced¹, and clerical patrons were made subject to some further special restrictions². Parochial church councils had already been given a limited voice in the selection of a new incumbent³.

1 As to the suspension of new rights of patronage when a church is consecrated in an area which may become a new parish as a result of recommendations for the creation of a new benefice for a new parish under the Pastoral Measure 1968, see s 73, and PARA 817 post; and as to other cases, see PARA 812 et seq post.

2 See PARA 812 et seq post. As to the restriction on the right of patronage of an incumbent when inhibited under the Ecclesiastical Jurisdiction Measure 1963, s 76, see PARA 1381 post.

3 See the Benefices (Exercise of Rights of Presentation) Measure 1931, and PARA 818 post.

UPDATE

811 In general

NOTE 1--1968 Measure consolidated in Pastoral Measure 1983; see s 73.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/812. Self-presentation.

812. Self-presentation.

If a right of patronage has become vested in a person who was at the time it became so vested, or who subsequently becomes, a clergyman, or in his wife, or in someone on his or her behalf, he cannot be presented to the benefice, and such presentation is void¹.

¹ Benefices Act 1898 (Amendment) Measure 1923, s 3, applying after 14th July 1924. With regard to patronage which became vested before the passing of that Measure, it may be said that a patron technically cannot present himself, but if he is in other respects fit he may offer himself to the bishop to be admitted to the benefice and the bishop is bound to admit him: *Gib Cod* 794; *Watson, Clergyman's Law* (4th Edn) 227; *Walsh v Bishop of Lincoln* (1875) LR 10 CP 518; *Lowe v Bishop of Chester* (1883) 10 QBD 407.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/813. Suspension of presentation.

813. Suspension of presentation.

Within three months before a benefice¹ is due to become vacant or during a vacancy² the bishop³ may, with the consent of the pastoral committee⁴ and after consultation with the patron⁵ of the benefice⁶ and the parochial church council of the parish⁷ or parishes concerned, give notice that during a specified period not exceeding five years (known as 'the suspension period') the patron must not exercise his right of presentation without the consent of the pastoral committee and of the bishop, and thereupon it may be exercised only in accordance with the notice during the suspension period⁸. The period may be extended by the bishop for further periods, not exceeding five years in the case of any one period, by a further notice, which requires the same consent and the same consultation as the original notice⁹. The suspension period comes to an end (1) if notice is given by the bishop that the necessary consent has been given to the exercise of the patron's right of presentation¹⁰; (2) if notice has been given by the bishop, with the consent of the pastoral committee, terminating the period¹¹; or (3) if a pastoral scheme or order¹² provides for the holding of the benefice in plurality with another benefice or other benefices, or if a pastoral scheme otherwise affecting the benefice expressly provides for the termination of the period¹³.

Any notice given by the bishop must be given to the Church Commissioners, the patron of the benefice (unless the bishop is patron), the churchwardens of the parish or each of the parishes concerned, and the sequestrators, if any have been appointed¹⁴; and a copy must be filed in the diocesan registry¹⁵. The churchwardens must affix any such notice at or near to the door of the parish church or, if there is no parish, church, of the principal place of worship in the parish¹⁶.

The bishop may suspend the right of presentation even though the right is already restricted¹⁷.

1 For the meaning of 'benefice', see PARA 768 note 1 ante.

2 Pastoral Measure 1968, s 67 (2).

3 'Bishop' means the bishop of the diocese concerned, and includes any person appointed as deputy under *ibid* s 85 (see PARA 473 ante) and also, if the see is vacant and no person is so appointed, the guardian of the spiritualities (as to whom see PARA 489 ante): s 90 (1).

4 As to pastoral committees, see *ibid* ss 1, 2, and PARA 861 et seq post.

5 'Patron' in relation to any benefice means the person or persons for the time being entitled, otherwise than by lapse, to present to that benefice upon a vacancy, and includes (1) in a case where the right to present is vested in different persons jointly, every person whose concurrence would be required for the exercise of the joint right, and (2) in any case where the patronage is vested in different persons by way of alternate or successive right of presentation, every person who is for the time being the person who would be entitled to present on the next or any subsequent turn: *ibid* s 90 (1). 'Right of patronage' is to be construed accordingly: 90 (1). In the application of these definitions the fact that any person is a Roman Catholic is to be disregarded: s 90 (1).

6 No consultation is necessary if the bishop is himself the patron or if the patron's rights have lapsed (which generally happens six months after the occurrence of a vacancy: see PARA 826 post): *ibid* s 67 (1).

7 For the meaning of 'parish', see *ibid* s 89 (1), and PARA 534 ante.

8 *Ibid* ss 67 (1), 90 (1).

9 *Ibid* s 67 (4).

10 Ibid s 67 (3) (a). Under s 67 (3) (a) and (b) the termination takes effect on the day specified in the notice, which must be at least fourteen days after the date of the notice: s 67 (3).

11 Ibid s 67 (3) (b); see note 10 supra.

12 As to pastoral schemes and orders, see PARA 856 et seq post.

13 Pastoral Measure 1968, s 67 (3) (c), under which the termination takes affect when the relevant provisions come into operation: s 67 (3).

14 le under ibid s 68: see PARA 815 post.

15 Ibid s 67 (5).

16 Ibid s 67 (6).

17 See ibid s 69 (4), and PARA 816 post. The right of a patron of a benefice in respect of which a notice has been given under s 67 to exercise, while the benefice is vacant, any right of presentation vested in the incumbent of the benefice is not affected: s 71.

UPDATE

813 Suspension of presentation

NOTES--1968 Measure consolidated, with amendments, in Pastoral Measure 1983; see generally s 67; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21.

NOTE 3--Bishop now means only the bishop of the diocese concerned: Pastoral Measure 1983 s 87(1).

NOTE 4--Now Pastoral Measure 1983 ss 1, 2.

TEXT AND NOTES 5-8--Now after consultation with (a) the registered patron of the benefice; (b) the parochial church council of the parish or each of the parishes concerned; and (c) both chairmen of the deanery synod of the deanery concerned: Pastoral Measure 1983 s 67(1); Patronage (Benefices) Measure 1986 Sch 4 para 18. As to the meaning of 'registered patron', see the 1983 Measure s 87(1), PARA 872. When consulting any person in accordance with these provisions, the bishop must inform him of the reasons why he is considering whether he should exercise the power conferred by s 67(1): s 67(1).

Except where any consultation required by s 67(1) takes place at a meeting between the bishop or his representative and the person to be consulted or his representative, that person must be advised that he may, within 28 days after receiving a request from the bishop for his views about the giving of notice under s 67(1), request a meeting with the bishop or his representative, and where such a request is made, the bishop must convene a meeting which all the persons whom he is required by s 67(1) to consult must be invited to attend, either in person or by representatives, for the purpose of enabling those present to consult with the bishop or his representative about the giving of the notice: s 67(3).

NOTE 5--Now Pastoral Measure 1983 s 87(1).

NOTE 6--Now Pastoral Measure 1983 s 67(1); 1986 Measure Sch 4 para 18, providing that no consultation is necessary if the bishop is himself the registered patron (see TEXT AND NOTES 5-8).

NOTE 7--Now Pastoral Measure 1983 s 86(1).

NOTE 9--Now Pastoral Measure 1983 s 67(5). See also the Pastoral Measure 1983 s 67(5A) (added by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 13(a)).

NOTES 10-13--Now Pastoral Measure 1983 s 67(4).

TEXT AND NOTE 15--Now notice must be given to the pastoral committee, registered patron of the benefice (unless the only registered patron is the bishop), both chairmen of the deanery synod of the deanery concerned, the churchwardens, the sequestrators and the designated officer within the meaning of the Patronage (Benefices) Measure 1986 s 7(5); Pastoral Measure 1983 s 67(6) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 13(b)); 1986 Measure Sch 4 para 18; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21. See also the Pastoral Measure 1983 s 67(6A) (added by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 13(c)).

NOTE 16--Now 1983 Measure s 67(7).

NOTE 17--Section 69(4) now 1983 Measure s 69(4). 1968 Measure s 71, consolidated in 1983 Measure s 71, repealed: 1986 Measure Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/814. Performance of duties during vacancy.

814. Performance of duties during vacancy.

While the benefice is vacant owing to the suspension of the right to present, the sequestrators¹ must, subject to and in accordance with the bishop's² directions, provide for the performance during the suspension period³ of the ecclesiastical duties of the benefice⁴. Before giving any directions the bishop must consult the parochial church council of the parish or each of the parishes concerned and, so far as is reasonably practicable, the patron of the benefice⁴. A curate appointed to be in charge of the benefice may be required to reside in the parsonage house⁵ of the benefice⁶.

1 As to sequestrators, see PARA 815 post.

2 For the meaning of 'bishop', see PARA 813 note 3 ante.

3 For the meaning of 'suspension period', see PARA 813 ante.

4 Pastoral Measure 1968, s 68 (2).

5 'Parsonage house' means the house or other dwelling vested in the incumbent of a benefice (when the benefice is full) and being his official residence, and includes, and outbuildings or land included in the curtilage of any such house or dwelling and any rights appurtenant thereto: *ibid* s 90 (1).

6 *Ibid* s 68 (3).

UPDATE

814 Performance of duties during vacancy

TEXT AND NOTE 4--Now the Pastoral Measure 1983 s 68(2); Patronage (Benefices) Measure 1986 Sch 4 para 19; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 22, substituting 'registered patron' for 'patron' and deleting 'in appointing sequestrators ... duties of the office'. As to the meaning of 'registered patron', see the 1983 Measure s 87(1) (PARA 872).

NOTE 5--*Ibid* s 87(1).

TEXT AND NOTE 6--Now a priest in charge of the benefice: *ibid* s 68(4). As to consultation before appointment of a priest in charge, see s 68(3) (see PARA 714).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/815. Sequestration during suspension.

815. Sequestration during suspension.

Where the bishop¹ has declared a suspension period² in respect of a benefice³, during that period he must sequester the profits of the benefice, and in appointing sequestrators must ensure that one of the persons appointed is specially qualified by training or by experience to discharge efficiently the duties of the office⁴. With the bishop's consent the sequestrators may exercise in relation to the property of the benefice all the powers of the incumbent, not being powers exercisable during a vacancy by the bishop or the Church commissioners⁵. With the commissioners, consent the bishop may authorise the sequestrators, if they think fit, to grant a lease or tenancy of the parsonage house⁶ for such period as he may authorise⁷. The sequestrators must apply the income⁸ of the benefice in the prescribed manner⁹.

1 For the meaning of 'bishop', see PARA 813 note 3 ante.

2 Under the pastoral measure 1968, s 67: see PARA 813 ante. Where, on the termination of a suspension period in respect of any benefice, there immediately follows a further period during which the profits of the benefice are sequestrated, the suspension period includes that further period for the purposes of Sch. 7: s 68 (4), Sch. 7 para 7 (2).

3 For the meaning of 'benefice', see PARA 768 note 1 ante.

4 Pastoral Measure 1968, s 68 (1). Such a qualified sequestrator may be paid his proper professional charges for work undertaken by him: Sch. 7 para 3 (1) (d).

5 Ibid Sch. 7 para 1. These powers are in addition to those which the sequestrators have under the Benefices (Sequestrations) Measure 1933 or under the general law: Pastoral measure 1968, Sch. 7 para 1.

6 For the meaning of 'parsonage house', see PARA 814 note 5 ante.

7 Pastoral Measure 1968, Sch. 7 para 2. Any such lease or tenancy is subject to the provisions of the Pluralities Act 1838, s 59 (as to which see PARA 1157 post): Pastoral Measure 1968, Sch. 7 para 2. Such a lease or tenancy may also be granted where the profits of a benefice to which presentation is restricted are sequestrated: see s 69 (5), and PARAS 816, 817 post.

8 For the purposes of ibid Sch. 7, 'income' includes any sum charged on the endowments of the benefice for the payment of an assistant curate and accruing during the suspension period: Sch. 7 para 7 (1). If immediately before the suspension period there has been a vacancy in the benefice concerned during which sequestrators were appointed, they must pay any balance in their hands at the close of that sequestration, after discharge of liabilities, to the sequestrated appointed under s 68 (1); the provisions of Sch. 7 apply to any money so received as if it were income of the benefice accruing during the second sequestration: Sch. 7 para 5.

9 Ibid Sch. 7 para 3 (1). Notwithstanding any statutory requirements to the contrary the sequestrators must apply the income in payment of (1) expenses incurred by the bishop under ss 67, 68 (Sch. 7 para 3 (1) (a)); (2) expenses properly incurred in the collection of the income of the benefice (Sch. 7 para 3 (1) (b)); (3) expenses of performance of the ecclesiastical duties of the benefice, including accommodation (Sch. 7 para 3 (1) (c)); (4) sequestration expenses, including the proper professional charges of the qualified sequestrator (Sch. 7 para 3 (1) (d)); and (5) the stipend and expenses of accommodation of an assistant curate (Sch. 7 para 3 (1) (e)). Whilst the suspension period lasts, the sequestrators may, with the bishop's consent, and must if he directs, pay part of the balance in their hands to the Church Commissioners (Sch. 7 para 3 (2)), to whom the balance must be paid at the close of sequestration (Sch. 7 para 3 (3)).

The commissioners must apply the money, on the direction of the bishop with the concurrence of the pastoral committee, in one or more of the following ways: (a) towards the augmentation of the endowment of the benefice (including any benefice the area of which includes the whole or part of the area of the benefice the presentation to which was suspended and, if the benefice is or is to be held in plurality, any of the benefices so held or to be held), the provision of a parsonage house for it, or otherwise to its advantage; (b) in making a

grant to the next succeeding incumbent; (c) by crediting the capital or income account of the diocesan stipends fund: Sch. 7 para 4. Accounts must be rendered by the sequestrators in accordance with Sch. 7 para 6.

UPDATE

815 Sequestration during suspension

NOTES--1968 Measure consolidated in Pastoral Measure 1983; see generally s 68(1), (5), Sch 7 (Sch 7 amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 22); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 paras 22, 25.

TEXT AND NOTE 7--Now Endowments and Glebe Measure 1976 s 38(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 5 para 11), requiring the board's consent in place of the commissioners' consent and disapplying the provisions of the 1838 Act s 59. 1968 Measure s 69(5) repealed: Pastoral (Amendment) Measure 1982 s 52(5).

NOTE 8--Sch 7 para 7(1) repealed: 1976 Measure Sch 8.

1968 Measure Sch 7 para 3 now Pastoral Measure 1983 Sch 7 para 2. Money received by the diocesan board of finance from the sequestrators under Sch 7 para 2(2) or (3) (as amended by the 2000 Measure Sch 6 para 10) must be allocated to the income account of the diocesan stipends fund: 1983 Measure Sch 7 para 3 (amended by the 2000 Measure Sch 6 para 10). 1968 Measure Sch 7 para 6 now 1983 Measure Sch 7 para 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iii) Restrictions on Exercise of Patronage/816. Restrictions on presentation where pastoral scheme or order contemplated.

816. Restrictions on presentation where pastoral scheme or order contemplated.

Where the bishop has given directions to a pastoral committee¹ to consider the creation, alteration or dissolution of benefices², the holding of benefices in plurality³ or the establishment, termination or alteration of team⁴ or group ministries⁵, he may, when giving notice of a vacancy or impending vacancy in any of the benefices concerned⁶, also notify the patron⁷ (unless he is himself the patron) and the parochial church council that those matters are being considered, and thereupon the patron must not exercise his right of presentation without the consent of the pastoral committee and the bishop⁸. This restriction ceases one year from the date of the notification unless within that period proposals are submitted to the Church Commissioners⁹ containing recommendations for any of the above-mentioned matters which would affect the benefice concerned¹⁰.

The right of presentation cannot be restricted in this way in the case of any benefice the patronage or any share in the patronage of which is vested in the Crown or the Duchy of Lancaster or the Duchy of Cornwall without the consent, given either generally or in respect of a particular benefice, of Her Majesty or, as the case may be, the Duke of Cornwall¹¹.

When the right of presentation is suspended in this manner time does not run for the purposes of lapse¹².

1 For the bishop's power to give directions to the pastoral committee, see the Pastoral Measure 1968, s 2 (1), and PARA 861 post. For the meaning of 'bishop', see PARA 813 note 3 ante. As to the pastoral committee, see PARA 861 post.

2 See *ibid* s 16, and PARA 864 post.

3 See *ibid* s 17, and PARA 853 post.

4 See *ibid* ss 19, 21, and PARAS 870, 871 post.

5 See *ibid* ss 20, 21, and PARA 872 post.

6 *Ie* under the Benefices (Exercise of Rights of Presentation) Measure 1931, s 1: see PARA 818 post.

7 For the meaning of 'patron', see PARA 813 note 5 ante.

8 Pastoral Measure 1968, s 69 (2).

9 *Ie* under *ibid* s 3 (6) or s 13 (1): see PARAS 854, 862 post.

10 *Ibid* s 69 (3). For the position when proposals are made within the year, see s 69 (1), and PARA 817 post. The fact that restrictions are in force under s 69 does not prevent the bishop from exercising his powers under ss 67, 68. If he does so, 67, 68 and Sch. 7 apply to the benefice, to the exclusion of s 69: s 69 (4). Even if he does not he may, if the profits of the benefice are sequestrated, exercise the power conferred by Sch. 7 para 2, to authorise a lease or tenancy of the parsonage house: s 69 (5). Whilst a benefice is vacant by virtue of s 69, the patron may nevertheless exercise any right of presentation vested in the incumbent of the benefice: s 71.

11 *Ibid* s 81 (1): see PARA 784 ante.

12 *Ibid* s 72 (1). The limitation binds the Crown (s. 72 (2)), which is therefore prevented from exercising its powers on lapse.

UPDATE

816 Restrictions on presentation where pastoral scheme or order contemplated

TEXT AND NOTES 1-8--Now where the bishop has given directions to a pastoral committee to consider, or has been notified under Pastoral Measure 1983 s 2(2) (see PARA 861) that the committee intends to consider, these matters, he may, on a vacancy or impending vacancy in any of the benefices concerned, also notify the registered patron, unless the only registered patron is the bishop, the parochial church council and both chairmen of the deanery synod of the deanery concerned that these matters are being considered, and thereupon the registered patron must not exercise his right of presentation without the consent of the pastoral committee and the bishop, and the provisions of the Patronage (Benefices) Measure 1986 s 7 (see PARA 818A.1) apply, subject to the modifications made by the 1983 Measure s 70: s 69(2); 1986 Measure Sch 4 para 20. As to the meaning of 'registered patron', see the 1983 Measure s 87(1) (see PARA 872).

Where a joint pastoral committee has been appointed under 1983 Measure s 13 (see PARA 457), the bishop may on a vacancy or impending vacancy in any benefice which might be affected by the exercise of the powers of that committee under ss 13, 36, as limited, if at all, by instruments sealed by the bishops of the dioceses concerned, also notify the persons referred to that those matters are being considered and thereupon the registered patron may not exercise his right of presentation to that benefice without the consent or consents specified in s 69(1) PARA 817, and the provisions of the Patronage (Benefices) Measure 1986 s 7 apply, subject to the modifications made by the 1983 Measure s 70: s 69(2); 1986 Measure Sch 4 para 20.

TEXT AND NOTES 9, 10--Now the restrictions imposed by 1983 Measure s 69(2) so cease unless within that period proposals are submitted under s 4(1) or s 14(1) containing such recommendations: s 69(3).

NOTE 10--1968 Measure s 69(5) repealed: Pastoral (Amendment) Measure 1982 s 52(5). 1968 Measure s 71, consolidated in 1983 Measure s 71, repealed: 1986 Measure Sch 5.

NOTE 11--Now 1983 Measure s 81(1).

TEXT AND NOTE 12--Section 72, consolidated in 1983 Measure s 72, repealed: 1986 Measure Sch 5.

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817. Restrictions on presentation where pastoral scheme or order recommended.

Where any proposals submitted to the Church Commissioners by a bishop¹ contain recommendations for the creation, alteration or dissolution of benefices², the holding of benefices in plurality³ or the establishment, termination or alteration of team⁴ or group ministries⁵ and, any benefice which would be affected if the recommendations were implemented becomes vacant after the patron is sent a copy of the proposals, the patron is not entitled to exercise his right of presentation without the consent of the pastoral committee and the bishop until the occurrence of whichever of the following events first occurs: (1) the recommendations are implemented by a pastoral scheme or order, in which case the right of presentation is subject to the provisions of that scheme or order⁶; (2) the proposals, or the draft scheme or prepared in pursuance of them, are withdrawn, or the scheme is disallowed or withdrawn⁷; (3) the relevant recommendations are omitted from the proposals, draft scheme or order or from the scheme⁸; or (4) the period of three years from the date on which the patron is sent a copy of the proposals expires⁹. Whilst the right of presentation is thus restricted, time does not run for the purposes of lapse¹⁰.

There are special transitional provisions¹¹.

1 le under the Pastoral Measure 1968, s 3 (6) or s 13 (1): see PARAS 854, 862 post.

2 See *ibid* s 16, and PARA 864 post.

3 *Ibid* s 17, and PARA 853 post.

4 See *ibid* ss 19, 21, and PARAS 870, 871 post.

5 See *ibid* ss 20, 21, and PARAS 872 post.

6 *Ibid* s 69 (1) (a). As to pastoral schemes generally, see PARA 856 et seq post.

7 *Ibid* s 69 (1) (b).

8 *Ibid* s 69 (1) (c).

9 *Ibid* s 69 (1) (d). A restriction on the right of presentation resulting from notice by the bishop under s 69 (2) (see PARA 816 ante) continues, where proposals affecting the benefice are made within a year of the notice, until the occurrence of whichever of the events mentioned in s 69 (1) (a)-(c) occurs first, and the expiration of three years from the date of the notice: s 69 (3); see PARA 816 text and note 10 ante. Whilst restrictions under s 69 (1) are in force the bishop may, if the profits of the benefice are sequestrated, exercise the power conferred by Sch. 7 para 2, of authorising a lease or tenancy of the parsonage house: s 69 (5). Where any proposals approved by the bishop under s 3 (6) (see PARA 862 post) contain recommendations for the creation of a new benefice for a new parish, and any church in the area to form the new parish is consecrated after approval is given, but before the occurrence of any of the events mentioned in s 69 (1), no person may become patron of that church otherwise than under the Pastoral Measure 1968 until one of those events occurs: s 73.

10 *Ibid* s 72 (1). This provision binds the Crown: s 72 (2).

11 See *ibid* s 94, Sch. 8. Where on 1st April 1969 any period of suspension of rights of presentation was in force under the Benefices (Suspension of Presentation) Measure 1953, as amended by the Benefices Suspension of Presentation (Continuance) Measure 1965 (both of which were repealed by the Pastoral Measure 1968, s 95, Sch. 9), that period has effect as if the notice, or the last notice, given under the Measure of 1953 had been given under the Pastoral Measure 1968, s 67: Sch. 8 para 9 (c). As to s 67, see PARA 813 ante.

UPDATE

817 Restrictions on presentation where pastoral scheme or order recommended

NOTE 1--Now under Pastoral Measure 1983 s 4(1) or s 14(1).

TEXT AND NOTES 2-9--Now where any proposals contain such recommendations and any benefice which would be affected if the recommendations were implemented is vacant on the date on which its registered patron receives a copy of the proposals under *ibid* s 4(2) (see PARA 862) or becomes vacant afterwards, the registered patron is not entitled after that date or after the occurrence of the vacancy, as the case may be, to exercise his right of presentation without the specified consents until the occurrence of a specified event: s 69(1); Patronage (Benefices) Measure 1986 Sch 4 para 20. As to the meaning of 'registered patron', see the 1983 Measure s 87(1) (see PARA 872).

NOTE 9--Now restrictions imposed by *ibid* s 69(2) (see PARA 816) so continue: s 69(3). 1968 Measure s 69(5) repealed: Pastoral (Amendment) Measure 1982 s 52(5). 1968 Measure s 73 now 1983 Measure s 73, referring to proposals approved by the bishop under s 4(1).

TEXT AND NOTE 10--Section 72, consolidated in 1983 Measure s 72, repealed: 1986 Measure Sch 5.

NOTE 11--Not reproduced in 1983 Measure.

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818. Restriction at instance of parochial church council.

A vacancy or impending vacancy¹ in a benefice² must be notified³ by the bishop to the patron and the parochial church council⁴. The council may then make written representations to the patron as to the conditions, needs and traditions of the parish, but without mentioning the name of a particular clergyman⁵. A copy must be sent to the bishop⁶.

Notwithstanding the receipt by the patron of these representations, he may exercise his rights of presentation or collation as if these provisions had not been passed unless within thirty days after the notification of the vacancy or impending vacancy the council passes a resolution (which must be notified forthwith to the bishop and patron) that the following provisions shall have effect⁷. The patron may exercise his right of presentation after conferring with and obtaining the consent of the churchwardens acting as the council's representatives⁸. When sixty days have elapsed since the notification of vacancy or impending vacancy, and either (1) the churchwardens have not given their consent, or (2) a conference has, for any reason other than the patron's neglect or refusal, not taken place, the patron may exercise his right after obtaining the bishop's approval of the clergyman presented as being suitable for the duties attaching to the cure⁹. Before giving or withholding his approval the bishop may, and if the patron or council requires it must, consult the body of advisers¹⁰. If the bishop finally withholds his approval his decision is open to review by the archbishop at the instance of the patron¹¹. A presentation is not valid unless made with the foregoing consent, approval or authorisation¹². If the bishop is himself the patron he must, before collating a clergyman, consult the churchwardens and also, if he deems it expedient or if the churchwardens so require, the body of advisers¹³. This provision also applies where the patronage of a vacant benefice has lapsed to a bishop or archbishop¹⁴.

1 'Impending vacancy' means only such a vacancy as the bishop considers must necessarily occur within such a period that in his opinion it is reasonable to notify it under the Benefices (Exercise of Rights of Presentation) Measure 1931: see s 9.

2 The Benefices Act 1898, s 2 (2), and the provisions of the Benefices (Exercise of Rights of Presentation) Measure 1931 do not apply to the admission of a person designated by, or selected under, a pastoral scheme or order as the incumbent of any benefice (Pastoral Measure 1968, s 23 (4), Sch. 3 para 4 (3)); or to Crown patronage, the patronage of the Duchy of Cornwall or the Greenwich Hospital patronage of the Admiralty (Benefices (Exercise of Rights of Presentation) Measure 1931, s 7).

3 For the mode of notification to the patron, see *ibid* s 8.

4 *Ibid* s 1; Revised Canons Ecclesiastical, Canon C9 para 1. Notification to the parochial church council is a condition precedent to the bishop's power to institute an incumbent to the vacant benefice, and if there is no parochial church council the institution must be postponed until a council is constituted: *King v Bishop of Truro* [1937] P 36. For the application of the Benefices (Exercise of Rights of Presentation) Measure 1931, s 1, to the presentation of the first incumbent of a new benefice created under a pastoral scheme or order, see PARA 835 post.

5 *Ibid* s 2 (1).

6 *Ibid* s 2 (2).

7 *Ibid* s 3 (1). Time does not run while the patron's right to present is suspended: see the Pastoral Measure 1968, s 72 (1), and PARAS 816, 817 ante.

8 Benefices (Exercise of Rights of Presentation) Measure 1931, s 3 (2) (i).

9 Ibid s 3 (2) (ii).

10 Ibid s 3 (2) proviso (a). The body comprises three clergymen and four laymen elected triennially by the appropriate Houses of the diocesan synod, and the archdeacon, who is chairman with power to call meetings and otherwise regulate the body's procedure: s 4 (1); Synodical Government Measure 1969, s 4 (7). A member who has a personal interest may not sit, and if the archdeacon has a personal interest his place is taken by such other member as the bishop selects: Benefices (Exercise of Rights of Presentation) Measure 1931, s 4 (3). The diocesan synod has power to fix a quorum for the body and make provision with respect to casual vacancies, and to make provision for a separate body for each archdeaconry in the diocese and to determine the manner of elections: s 4 (2); Synodical Government Measure 1969, s 4 (7). A fee of £9 is payable to the bishop's legal secretary if the body is consulted: Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table I, item 15.

11 Benefices (Exercise of Rights of Presentation) Measure 1931, s 3 (2) proviso (b). The archbishop's function in reviewing the bishop's decision is the same as that of the bishop; the matter is not a *lis inter partes* and the archbishop is under no obligation to hold a quasi-judicial inquiry: *R v Archbishop of Canterbury, ex parte Morant* [1944] KB 282, [1944] 1 All ER 179, CA.

12 Benefices (Exercise of Rights of Presentation) Measure 1931, s 3 (2) (iii).

13 Ibid s 3 (2) (iv).

14 Ibid s 3 (2) (v).

UPDATE

818 Restriction at instance of parochial church council

TEXT AND NOTES--1931 Measure replaced by Patronage (Benefices) Measure 1986 Pt II (ss 7-24) (see PARA 818A).

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818A. Exercise of rights of presentation.

1. Notification of vacancies

Where a benefice¹ becomes vacant by reason of the death of the incumbent, the bishop must, as soon as practicable after he becomes aware of the vacancy, give notice of that fact to the designated officer² of the diocese³. Where the bishop is aware that a benefice is shortly to become vacant by reason of resignation or cession, the bishop must give such notice of that fact as he considers reasonable in all the circumstances to the designated officer of the diocese⁴. As soon as practicable after receiving a notice under the foregoing provisions, the designated officer must send notice of the vacancy to the registered patron⁵ of the benefice and to the secretary of the parochial church council of the parish belonging to the benefice⁶.

These provisions⁷ apply to a Crown benefice⁸.

Where the bishop declares a suspension period⁹ in respect of any benefice, or any restriction¹⁰ comes into force in respect of any benefice (a) no notice¹¹ of a vacancy or impending vacancy in that benefice may be given during the suspension period or while the restriction is in force; (b) any such notice relating to that benefice given before the suspension period began or the restriction came into force is deemed to have been revoked and any act done in consequence of that notice is of no effect; (c) that benefice is deemed to become vacant immediately after the day on which the suspension period comes to an end or the day on which the restriction ceases to be in force, but if a further suspension period is declared, the benefice shall no longer be deemed to be vacant; and (d) as soon as practicable after he becomes aware of the vacancy, the bishop must give notice of that fact to the designated officer and, unless he is the designated officer, to the registrar of the diocese¹².

Where a benefice is vacant on 1 October 1987 or becomes vacant after that date and before the end of the registration period¹³, the vacancy must be filled in accordance with the law in force immediately before 1 October 1987¹⁴. However, if a suspension period has been declared in respect of the benefice or any restriction¹⁵ has been imposed in respect of the benefice and the suspension period does not come to an end, or the restriction does not cease to be in force, until after the end of the registration period, the vacancy must be filled in accordance with the Patronage (Benefices) Measure 1986¹⁶.

¹ As to the meaning of 'benefice', see PARA 783A.1. As to provisions relating to Crown benefices, see PARA 818A.15.

² 'The designated officer', in relation to a diocese, means such person as the bishop, after consulting the bishop's council, may designate or, if no person is designated, the secretary of the pastoral committee of the diocese: Patronage (Benefices) Measure 1986 s 7(5).

³ Ibid s 7(1), which is subject to the Pastoral Measure 1983 s 70. Any notice required to be given to the designated officer under the 1986 Measure s 7(1) or (2) must also be given to the registrar of the diocese, unless he is the designated officer: s 7(3).

⁴ Ibid s 7(2), which is subject to the 1983 Measure s 70. See also 1986 Measure s 7(3), NOTE 3.

⁵ 'Registered patron', in relation to a benefice, means any person who or office which is registered as a patron of that benefice: ibid s 39(1). See generally PARA 783A.

In the 1986 Measure Pt II (ss 7-24), except in ss 7(4) and 10, any reference to a registered patron, in relation to any vacancy in a benefice in respect of which there is more than one patron registered under the 1986 Measure, is construed as a reference to the registered patron whose turn it is, according to the information in

the register of patrons (see PARA 783A.1) on the date when the vacancy occurs, to present on that vacancy: s 24(1), which is expressed to be subject to s 24(2) and (3).

In a case where the functions of the registered patron of a benefice in relation to a vacancy in the benefice are to be discharged by the holder of an office or the donee of a power of attorney, any reference in the 1986 Measure Pt II (except in ss 8, 9(1)-(4) and 21) to the registered patron must be construed as a reference to that office holder or donee: s 24(2), which is expressed to be subject to s 24(3) (see PARA 818A.5, PARA 818A.7).

6 Ibid s 7(4). A notice sent under s 7(4) must include such information as may be prescribed: s 7(4).

Where a benefice comprises two or more parishes (see PARA 783A.1) then, except in a case where Sch 2 para 19 or 20 applies (see PARA 818A.14) s 7(4) is modified by Sch 2 para 2 by the substitution of 'each of the parishes' for 'the parish'.

7 le ibid s 7.

8 Ibid s 35(7). See further PARA 818A.15.

9 See the 1983 Measure s 67(1), PARA 813.

10 le any restriction imposed by or under any provision of ibid s 24 or 69.

11 le under the 1986 Measure s 7.

12 Pastoral Measure 1983 s 70 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 15); 1986 Measure Sch 4 para 21. On the benefice being deemed to become vacant the bishop must give the patron and the parochial church council the notice required by s 7(4) so however that if the suspension period will come to an end as a result of a notice given by the bishop under the 1983 Measure s 67(4), the notice under the 1986 Measure s 7 may be given by the bishop at the same time as the notice under the 1983 Measure s 67(4); in any other case the notice under the 1986 Measure s 7 may be given not more than 14 days before the suspension period will end or the restriction will cease to be in force: 1983 Measure s 70; 1986 Measure Sch 4 para 21.

13 See PARA 783A.1.

14 1986 Measure s 40.

15 le any restriction under the 1983 Measure s 69.

16 1986 Measure s 40.

2. Declarations of membership

Where the registered patron¹ of a benefice² is an individual and is not a clerk in holy orders³, he must on receiving notice⁴ of a vacancy in the benefice (a) if able to do so, make a written declaration⁵ ('the declaration of membership') declaring that he is an actual communicant member of the Church of England or of a Church in communion with that Church⁶ or (b) if unable to make the declaration himself, appoint some other person, being an individual who is able and willing to make it or is a clerk in holy orders or one of certain specified bodies⁷, to act as his representative to discharge the functions of a registered patron in his place⁸.

Where the registered patron of a benefice is a body of persons corporate or unincorporate then, on receiving notice of a vacancy in the benefice, that body must appoint an individual who is able and willing to make the declaration of membership or is a clerk in holy orders to act as its representative to discharge the functions of a registered patron in its place⁹.

Where the right of presentation to a benefice belongs to an office (other than an ecclesiastical office¹⁰) and the benefice become vacant, the person who holds that office on the date when the benefice becomes vacant is entitled to present on that vacancy and must as soon as practicable after that date (a) if able to do so, make the declaration of membership or (b) if unable to make the declaration himself, appoint some other person¹¹ to act as his representative to discharge the functions of a registered patron in his place¹².

Where the right of presentation to a benefice is exercisable by the donee of a power of attorney, the donee must as soon as practicable after receiving notice of the vacancy in the benefice (or, if the power is created during the vacancy, as soon as practicable after it is created) (a) if able to do so, make the declaration of membership or (b) if unable to make the declaration himself, appoint some other person to act as his representative to discharge the functions of a registered patron in his place¹³.

1 See PARA 818A.1.

2 See PARA 783A.1.

3 'Clerk in holy orders' means a priest or deacon of the Church of England and 'priest' includes a bishop: Patronage (Benefices) Measure 1986 s 39(1).

4 See under ibid s 7(4) (see PARA 818A.1).

5 As to the form of declaration, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 15.

6 'Actual communicant member of the Church of England' means a member of the Church of England who is confirmed or ready and desirous of being confirmed and has received Communion according to the use of the Church of England or of a Church in communion with the Church of England at least 3 times during the 12 months preceding the date on which he makes the declaration of membership: 1986 Measure s 39(1). 'Actual communicant member of a Church in communion with the Church of England' means a communicant member of a Church in communion with the Church of England who has received Communion according to the use of the Church of England or of a Church in communion with the Church of England at least 3 times during the 12 months preceding the date on which he makes the declaration of membership: s 39(1). If any question arises whether a Church is a Church in communion with the Church of England, it must be conclusively determined for the purposes of the 1986 Measure by the Archbishops of Canterbury and York: s 39(3).

7 The bodies are (a) the dean and chapter or the cathedral chapter of the cathedral church of the diocese; (b) the dean and chapter of the collegiate church of St Peter in Westminster; (c) the dean and canons of the collegiate church of St George, Windsor; (d) any diocesan board of patronage; (e) any patronage board constituted by a pastoral scheme; (f) any university in England or any college or hall in such a university; (g) the colleges of Eton and Winchester: ibid s 8(7). Where a body mentioned in s 8(7) is appointed under s 8 to discharge the functions of a registered patron, that body must as soon as practicable appoint as its representative an individual who is able and willing to make the declaration of membership or is a clerk in holy orders: s 8(6).

8 Ibid s 8(1)(a), (b). Notwithstanding anything in s 8(1), where the registered patron of a benefice who is an individual and is not the bishop of a diocese is of the opinion, on receiving notice of a vacancy under s 7(4), that he will be unable for any reason to discharge his functions as a patron of that benefice he may, notwithstanding that he is able to make the declaration of membership, appoint such a representative as is mentioned in s 8(1)(b) to discharge those functions in his place: s 8(3).

9 Ibid s 8(2). As to the form of appointment, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 16.

10 See PARA 322.

11 See a person who may be appointed as a representative under the 1986 Measure s 8(1)(b).

12 Ibid s 8(4).

13 Ibid s 8(5).

3. Information to be sent to the designated officer

Before the expiration of the period of two months beginning with the date when a benefice¹ becomes vacant or the expiration of three weeks after receiving notice of the vacancy from the designated officer², whichever is the later, a registered patron³ who is an individual must send to the designated officer⁴ of the diocese (a) the declaration of membership⁵ made by him or (b) the name and address of his representative⁶ and the declaration of membership made by that representative⁷. Before the expiration of that period of two months, or three weeks as the case

may be, a registered patron which is a body of persons corporate or unincorporate must send to the designated officer of the diocese the name and address of the individual who is to act as its representative and the declaration of membership made by that representative⁸.

Where the registered patron or his representative is a clerk in holy orders⁹, the registered patron must notify the designated officer of that fact before the expiration of the period during which the declaration of membership is required to be sent to the designated officer under the preceding provisions; a declaration of membership made by that clerk is not required to be sent to the designated officer¹⁰.

As soon as practicable after receiving information under these provisions as to the appointment of a representative, the designated officer must send the name and address of the representative to the secretary of the parochial church council¹¹.

Where any declaration of membership or other information required to be sent to the designated officer under the foregoing provisions is not sent to him before the expiration of the period during which it is required to be sent and the registered patron is a person other than the bishop then, after the expiration of that period (a) no meeting of the parochial church council, the registered patron and the bishop may be held¹² by reason of any request made by the registered patron and certain provisions¹³ do not apply to that patron and (b) no offer may be made¹⁴ to any priest to present him to a benefice¹⁵. However, the bishop may make an offer to such priest as he thinks fit to collate him to the benefice¹⁶.

1 See PARA 783A.1.

2 le under the Patronage (Benefices) Measure 1986 s 7(4) (see PARA 818A.1).

3 See PARA 818A.1.

4 See PARA 818A.1.

5 See PARA 818A.2.

6 In the Patronage (Benefices) Measure 1986 Pt II (ss 7-24), except in s 8 (see sub-para 2), 'representative', in relation to a registered patron, means (a) in the case of a registered patron who is an individual, the individual appointed under s 8(1)(b), (3) or (6); (b) in the case of a registered patron which is a body of persons, the individual appointed under s 8(2); (c) in the case of a registered patron which is an office, the individual appointed under s 8(4) or (6); (d) in a case where the functions of a registered patron are to be discharged by the donee of a power of attorney, the individual appointed under s 8(5) or (6): s 24(4).

7 Ibid s 9(1); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 26.

Where the functions of a registered patron are to be discharged by the holder of an office s 9(1) applies to the person who holds that office when the benefice becomes vacant as it applies to the registered patron: 1986 Measure s 9(3).

Where the functions of a registered patron are to be discharged by the donee of a power of attorney s 9(1) applies to the donee as it applies to the registered patron except that, if the power is created during the vacancy concerned, there is substituted for the period of two months in s 9(1) the period of two months beginning with the date on which the power is created, and the information required to be sent under s 9(1) includes information as to that date: s 9(4).

8 Ibid s 9(2); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 26.

9 See PARA 818A.2.

10 1986 Measure s 9(5).

11 Ibid s 9(6).

Where a benefice comprises two or more parishes then, except in a case in which Sch 2 para 19 or 20 applies (see PARA 818A.14) s 9(6) is modified by Sch 2 para 3 by the substitution of 'secretaries of the parochial church councils' for 'secretary of the parochial church council'. As to the meaning of 'parish', see PARA 783A.1.

12 le under ibid s 12 (see PARA 818A.6).

13 le ibid s 12(2), (5), (6) and (8).

14 le under ibid s 13 (see PARA 818A.7).

15 Ibid s 14(1).

16 Ibid s 14(1), which is expressed to be subject to s 14(2). The bishop must not make an offer under s 14(1) unless the making of the offer has been approved by the parish representatives (see PARA 818A.5): s 14(2). Section 13(3), (4)(b) and (5) (see PARA 818A.7) apply to a request sent by the bishop to the parish representatives by virtue of s 14(2) with the substitution of a reference to the bishop for a reference to the registered patron: s 14(2).

Where under s 14(1) the bishop makes an offer to a priest to collate him to a benefice in respect of which there is more than one person registered in a register of patrons, the registered patron whose turn it was to present to the benefice is treated as having exercised that turn: s 14(3).

4. Disqualification for presentation

Where the registered patron¹ of a benefice² or the representative³ of that patron, is a clerk in holy orders⁴ or is the wife of such a clerk, that clerk is disqualified for presentation to that benefice⁵.

1 See PARA 818A.1.

2 See PARA 783A.1.

3 See PARA 818A.3.

4 See PARA 818A.2.

5 Patronage (Benefices) Measure 1986 s 10.

5. Requirements as to meetings of the parochial church council

Before the expiration of the period of four weeks beginning with the date when notice¹ of a vacancy in a benefice² is sent to the secretary of the parochial church council, one or more meetings of that council must be held for the purposes of (a) preparing a statement describing the conditions, needs and traditions of the parish³; (b) appointing two lay members of the council to act as representatives⁴ of the council in connection with the selection of an incumbent⁵; (c) deciding whether to request the registered patron⁶ to consider advertising the vacancy⁷; (d) deciding whether to request a joint meeting⁸ with the registered patron and the bishop⁹; (e) deciding whether to request a statement in writing from the bishop describing in relation to the benefice the needs of the diocese and the wider interests of the Church¹⁰ and (f) deciding whether to pass a resolution that it will not accept a woman as the minister who presides at or celebrates the Holy Communion or pronounces the Absolution in the parish and/or that the administrative body will not accept a woman as dean of its cathedral, or a resolution rescinding those resolutions¹¹.

If, before the vacancy in the benefice is filled, any person appointed¹² to act as representative of the parochial church council dies or becomes unable for any reason to act as the representative of, or ceases to be a member of, the council by which he was appointed, then his appointment is deemed to have been revoked and the council must appoint another lay member of the council to act in his place¹³.

If a parochial church council holds a meeting but does not appoint any representatives at that meeting, then two churchwardens who are members of that council (or, if there are more than two churchwardens who are members of the council, two churchwardens chosen by all the

churchwardens who are members) must act as representatives of the council in connection with the selection of an incumbent¹⁴.

A copy of the statement¹⁵ describing the conditions, needs and traditions of the parish together with the names and addresses of the parish representatives¹⁶ must, as soon as practicable after the holding of the meeting¹⁷, be sent by the secretary of the parochial church council to the registered patron and, unless the bishop is the registered patron, to the bishop¹⁸.

Where a benefice comprises two or more parishes¹⁹, certain of these provisions are substantially modified²⁰.

1 Ie a notice under the Patronage (Benefices) Measure 1986 s 7(4) (see PARA 818A.1).

2 See PARA 783A.1.

3 Ibid s 11(1)(a).

4 See PARA 818A.3.

5 Ibid s 11(1)(b). None of the following members of the parochial church council is qualified for appointment under s 11(1)(b): (a) any person mentioned in s 11(2) (see NOTE 9) and (b) any deaconess or lay worker licensed to the parish: s 11(3).

Any reference in ibid ss 11 and 12 (except in s 11(2)(b)) to the registered patron of a benefice must be construed, in a case where the functions of the patron in relation to a vacancy in the benefice are to be discharged by a representative, as a reference to that representative: s 24(3). As to 'representative', see s 24(4) (see PARA 818A.3).

6 See PARA 818A.1.

7 Ibid s 11(1)(c).

8 Ie a meeting under ibid s 12 (see PARA 818A.6).

9 Ibid s 11(1)(d).

10 Ibid s 11(1)(e).

11 Ibid s 11(1)(f); Priests (Ordination of Women) Measure 1993 s 3(7) Sch 3 para 10. A meeting of the parochial church council for which the 1986 Measure s 11(1) provides must be convened by the secretary of the council, and no member of that council who is (a) the outgoing incumbent or the spouse or civil partner of the outgoing incumbent or (b) the registered patron or (c) the representative of the registered patron, may attend that meeting: s 11(2); 1993 Measure Sch 3 para 10; SI 2005/3129.

12 Ie appointed under 1986 Measure s 11(1)(b).

13 Ibid s 11(4), which is expressed to apply except where he ceases to be such a member and the council decides that he is to continue to act as its representative.

14 Ibid s 11(5), which is subject to s 11(6). A churchwarden who is the registered patron of a benefice is not qualified under s 11(5) to act as a representative of the parochial church council or to choose any other churchwarden so to act: s 11(6). In any case where there is only one churchwarden qualified to act as such a representative, he may act as the sole representative of that council in connection with the selection of the incumbent: s 11(6).

15 Ie the statement under ibid s 11(1)(a).

16 'Parish representative' means any representative of the parochial church council appointed under ibid s 11(1) or (4) and any churchwarden acting as such a representative by virtue of s 11(5) or (6): s 11(7).

17 Ie under ibid s 11(1).

18 Ibid s 11(8). If a copy of the statement prepared under s 11(1)(a) is not sent under s 11(8) to the persons mentioned in that provision then (a) if the bishop is the registered patron, he may, without making any request for the approval of the parish representatives, make to such priest as he thinks fit an offer to collate him to the

benefice and (b) if the bishop is not the registered patron, that patron is entitled to proceed under s 13 (see PARA 818A.7) as if s 13(1)(a), (b)(i), (3) and (4)(b) had not been enacted: s 15.

19 See PARA 783A.1.

20 See Sch 2 paras 4-9, which modify s 11(1)-(5), (8). These modifications apply unless Sch 2 para 19 or 20 applies; see PARA 818A.14.

6. Joint meeting of parochial church council with registered patron and bishop

Where a request for a meeting under these provisions is made (a) by a notice¹ sent by the registered patron² or the bishop to the secretary of the parochial church council or (b) by a resolution passed at a parochial church council meeting³, a joint meeting of the council with the registered patron and (if the bishop is not the registered patron) the bishop must be held for the purpose of enabling those present at the meeting to exchange views on the statement⁴ of the needs of the parish and the statement⁵ of the needs of the diocese⁶.

At any meeting held under these provisions, the bishop must present either orally or, if a request for a statement in writing has been made by the registered patron or the parochial church council, in writing, a statement describing in relation to the benefice the needs of the diocese and the wider interests of the Church⁷.

The outgoing incumbent and the spouse or civil partner of the outgoing incumbent are not entitled to attend a meeting⁸.

If either the registered patron or the bishop is unable to attend a meeting, he must appoint some other person to attend on his behalf⁹.

A meeting requested under these provisions is not treated for the purposes of the Patronage (Benefices) Measure 1986 as having been held unless there were present at the meeting (a) the bishop or the person appointed to attend on his behalf and (b) the registered patron or the person appointed to attend on his behalf and (c) at least one-third of the members of the parochial church council who were entitled to attend¹⁰.

The secretary of the parochial church council must invite both the rural dean of the deanery in which the parish is (unless he is the outgoing incumbent) and the lay chairman of the deanery synod of that deanery to attend a meeting under these provisions¹¹.

Where a benefice comprises two or more parishes¹², certain of these provisions are modified¹³.

1 Any such notice must be sent to the secretary of the parochial church council not later than 10 days after a copy of the statement prepared under the Patronage (Benefices) Measure 1986 s 11(1)(a) (see PARA 818A.5) is received by the persons mentioned in s 11(8): s 12(3).

2 See sub-para 1. See also *ibid* s 24(3) (see PARA 818A.5).

3 *Ie* a meeting under *ibid* s 11 (see PARA 818A.5).

4 *Ie* the statement prepared under *ibid* s 11(1)(a).

5 *Ie* the statement presented under *ibid* s 12(2).

6 *Ibid* s 12(1)(a), (b).

A meeting requested under s 12 must be held before the expiration of the period of 6 weeks beginning with the date when the request for the meeting was first made (whether by the sending of a notice as mentioned in s 12(1)(a) or by the passing of a resolution as mentioned in s 12(1)(b)): s 12(5). At least 14 days' notice (unless a shorter period is agreed by all the persons concerned) of the time and place at which the meeting is to be held must be given by the secretary of the parochial church council to the registered patron, the bishop (if he is not the registered patron) and the members of the parochial church council: s 12(5).

If notice is not given under s 12(5) of any joint meeting requested under s 12(1)(a) then (a) if the bishop is the registered patron, he may, without making any request for the approval of the parish representatives (see PARA

818A.5), make to such priest as he thinks fit an offer to collate him to the benefice and (b) if the bishop is not the registered patron, that patron is entitled to proceed under s 13 (see PARA 818A.7) as if s 13(1)(a), (b)(i), (3) and (4)(b) had not been enacted: s 15.

7 Ibid s 12(2).

8 Ibid s 12(4); Priests (Ordination of Women) Measure 1993 Sch 3 para 11; SI 2005/3129.

9 1986 Measure s 12(6).

10 Ibid s 12(8). The chairman of any meeting held under s 12 is such person as the persons who are entitled to attend and are present at the meeting may determine: s 12(7).

11 Ibid s 12(9).

12 See PARA 783A.1.

13 See Sch 2 paras 10-15, which modify s 12(1)-(3), (5), (8), (9). These modifications apply unless Sch 2 para 19 or 20 applies; see PARA 818A.14.

7. Selection of incumbent

The registered patron¹ of a vacant benefice² must not make to any priest an offer to present him to a benefice until (a) if a request for a joint meeting³ of the parochial church council, the registered patron and the bishop has been made, either (i) that meeting has been held, or (ii) all the parties concerned have agreed that no such meeting should be held or (iii) a prescribed⁴ period of 6 weeks has expired and (b) (whether or not such a request has been made) the making of the offer to the priest in question has been approved (i) by the parish representatives⁵ and (ii) if the registered patron is a person other than the bishop of the diocese in which the benefice is, by that bishop⁶. If, before the expiration of the period of 4 weeks beginning with the date when the registered patron sent the bishop a request for him to approve under head (b) the making of the offer to the priest named in the request, no notice is received from the bishop of his refusal to approve the making of the offer, the bishop is deemed to have given his approval⁷. Similar provision is made in relation to the parish representatives, except that a period of two weeks is specified instead of a period of 4 weeks⁸.

If the bishop or any parish representative refuses to approve the making of the offer to the priest named in the request, the bishop or the representative must notify the registered patron in writing of the grounds on which the refusal is made⁹. Where approval of an offer is refused by the bishop or any parish representative, the registered patron may request the archbishop to review the matter and if, after review, the archbishop authorises the patron to make the offer, the patron may do so¹⁰.

Where a priest accepts an offer made in accordance with these provisions to present him to a benefice and the registered patron is a person other than the bishop, the patron must send the bishop a notice presenting the priest to him for admission to the benefice¹¹.

1 See PARA 818A.1. Any reference in the Patronage (Benefices) Measure 1986 s 13 to the registered patron of a benefice must be construed, in a case where the registered patron, being an individual, has appointed a body mentioned in s 8(7) (see PARA 818A.2) or another individual to discharge the functions of patron, as a reference to that body or that other individual: s 24(3).

2 See PARA 783A.1.

3 I.e. a meeting under ibid s 12 (see PARA 818A.6).

4 I.e. the period mentioned in ibid s 12(5).

5 See PARA 818A.5.

6 Ibid s 13(1)(a), (b).

7 Ibid s 13(2).

8 Ibid s 13(3).

9 Ibid s 13(4).

10 Ibid s 13(5). Section 13(5) does not apply in respect of (a) a parish in a diocese to which a declaration under the Priests (Ordination of Women) Measure 1993 s 2(1)(b) (see PARA 657B.1) applies or (b) a benefice comprising a parish to which a resolution under the 1993 Measure s 3(1) (see PARA 657B.2) applies, where the refusal is made solely on grounds of gender: 1986 Measure s 13(5) proviso; 1993 Measure Sch 3 para 12.

The archbishop, after making such inquiries as he deems necessary, must give his reasons in writing for giving or withholding his authorisation to the patron to make the offer: Patronage (Benefices) Rules 1987, SI 1987/773, r 11(1). The archbishop may appoint the Vicar General of the province to make the inquiries on his behalf; the Vicar General must send a written report to the archbishop who must then determine the matter: r 11(2). A copy of the archbishop's determination must be sent to the bishop and to the parish representatives: r 11(3).

11 1986 Measure s 13(6).

8. Presentation to benefices remaining vacant for 9 months

If at the expiration of the period of 9 months¹ beginning with the date when a benefice² becomes vacant (a) no notice of presentation³ has been received by the bishop or (b) where the bishop is the registered patron⁴, he has not received an acceptance of any offer made by him to collate a priest to the benefice, the right of presentation to that benefice is exercisable by the archbishop in accordance with the following provisions and a notice to that effect must be sent by the bishop to the archbishop⁵.

As soon as practicable after a right of presentation becomes exercisable by an archbishop, he must send the secretary of the parochial church council of the parish concerned a notice requiring him, within three weeks after receiving the notice, to send the archbishop copies of the statement⁶ describing the conditions, needs and traditions of the parish together with copies of any additional observations which the council wishes the archbishop to consider⁷.

The bishop may, and if the archbishop so requests must, send the archbishop a statement describing in relation to the benefice the needs of the diocese and the wider interests of the Church⁸.

Before the archbishop decides on the priest to whom an offer to present him to the benefice is to be made he must consult the bishop, the parish representatives⁹ and such other persons as he thinks fit, including other persons who in his opinion can also represent the views of the parishioners¹⁰.

Where a priest accepts an offer to present him to a benefice made in accordance with these provisions, the archbishop must send the bishop a notice presenting the priest to him for admission to the benefice¹¹.

1 In calculating the period of nine months, no account is to be taken of any of the following periods: (a) a period during which the decision of the bishop to refuse to approve the making to a priest of an offer to present him to a benefice is under review by an archbishop, (b) a suspension period within the meaning of the Pastoral Measure 1983, or any period during which the benefice is vacant immediately before the declaration of a suspension period or between suspension periods, and (c) a period during which the exercise of rights of presentation is restricted under ibid s 24 or 69: Patronage (Benefices) Measure 1986 s 16(2) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 63(3)).

2 See PARA 783A.1.

3 Ie under the Patronage (Benefices) Measure 1986 s 13(6) (see PARA 818A.7).

4 See PARA 818A.1.

5 Ibid s 16(1).

6 Ie the statement prepared in accordance with ibid s 11 (see PARA 818A.5).

7 Ibid s 16(3).

Where a benefice comprises two or more parishes (see PARA 783A.1) then, except in a case in which Sch 2 para 19 or 20 applies (see PARA 818A.14) s 16(3) is modified by Sch 2 para 16 by the substitution of 'of each of the parishes belonging to the benefice' for 'of the parish' in the first place where those words occur.

8 Ibid s 16(4).

9 See PARA 818A.5.

10 Ibid s 16(5).

If during the period of 9 months mentioned in s 16(1) the approval of the bishop or the parish representatives (see PARA 818A.5) to the making of an offer to a priest by the registered patron of the vacant benefice has been refused under s 13 (see PARA 818A.7), the archbishop must not make any offer to that priest under these provisions unless the consent of the bishop or the parish representatives has been obtained: s 16(5).

11 Ibid s 16(6).

9. Refusal of bishop to institute presentee

Nothing in the Patronage (Benefices) Measure 1986 affects the power¹ of a bishop to refuse to institute or admit a presentee to a benefice². Where in exercise of any such power a bishop refuses to institute or admit a presentee to a benefice, and either no legal proceedings in respect of the refusal are brought or the refusal of the bishop is upheld in such proceedings, the presentation to the benefice affected must be made by the registered patron whose turn it was to present when the vacancy first occurred³.

1 Ie under the Benefices Act 1898 s 2(1)(b) or the Benefices Measure 1972 s 1 or any rule of law.

2 Patronage (Benefices) Measure 1986 s 17(1).

3 Ibid s 17(2). For the purposes of ss 7, 9, 11 and 12 (see PARAS 818A.1, 3, 5 and 6), a new vacancy is not treated as having occurred by virtue of s 17: s 17(2).

10. Notice of bishop's intention to institute or collate

A bishop may not institute or collate any person to a benefice¹ unless, after the occurrence of a vacancy, (a) a notice² in the prescribed form signed by or on behalf of the bishop is served on the secretary of the parochial church council of the parish³ concerned by the designated officer⁴ or the registrar of the diocese, as the bishop directs, informing the secretary of the bishop's intention to institute or collate that person to the benefice specified in the notice and (b) a period of three weeks has expired since the date of the service of the notice⁵.

Immediately on receipt of the notice, the secretary of the parochial church council must cause the notice or a copy of it to be fixed on or near the principal door of every church in the parish and every building licensed for public worship in the parish and to remain affixed there for two weeks; the secretary must also take such other steps as he thinks expedient for giving publicity to the notice⁶.

1 See PARA 783A.1.

2 As to the prescribed form of notice, see the Patronage (Benefices) Rules 1987, SI 1987/773, Form 17.

3 See PARA 783A.1.

4 'Designated officer' means in relation to a diocese such person as the bishop, after consulting the bishop's council, may designate or, if no person is designated, the secretary of the pastoral committee of the diocese: *ibid* r 1(1).

5 Patronage (Benefices) Measure 1986 s 19(1); 1987 Rules r 12(1). The notice must state the name of the priest in full and the ecclesiastical preferments previously held and declared by him and so far as they are known to the bishop: r 12(2).

The 1986 Measure s 19(1) does not apply to a person designated by or selected under a pastoral scheme or order (see PARA 856 *et seq*) as the incumbent of any benefice: s 19(3).

Where a benefice comprises two or more parishes then, except in a case in which Sch 2 para 19 or 20 applies (see PARA 818A.14) s 19(1) is modified by Sch 2 para 17 by the substitution of 'of each of the parishes' for 'of the parish'.

6 *Ibid* s 19(2); 1987 Rules r 13(1). At the expiration of the period during which the notice has been published the secretary of the council must sign an indorsement attached to the notice that he has complied with the provisions of r 13 and must return the notice: r 13(2).

11. Bishop acting in place of incumbent patron

Where a benefice¹ ('the ancillary benefice') becomes vacant and it is the turn of the incumbent of another benefice ('the principal benefice'), being the registered patron² of the ancillary benefice, to present to that benefice, then if when the ancillary benefice becomes vacant or at any time during the vacancy and before a notice of presentation³ is sent to the bishop by the incumbent of the principal benefice (a) the principal benefice is or becomes vacant or (b) the principal benefice is under sequestration or (c) the incumbent of the principal benefice is suspended or inhibited from discharging all or any of the duties attached to his preferment, the bishop must discharge in his place the functions of a registered patron⁴.

1 See PARA 783A.1.

2 See PARA 818A.1.

3 *Ie* under the Patronage (Benefices) Measure 1986 s 13(6) (see PARA 818A.7).

4 *Ibid* s 20.

12. Exercise of patronage by personal representatives

Where a benefice¹ becomes vacant and either (a) the registered patron² who would have been entitled to present on the vacancy is dead and the person to whom the right of patronage is to be transferred has not been registered³ as a patron of that benefice before the vacancy occurs or (b) the registered patron dies during the vacancy, then the right of presentation to that benefice on that vacancy is exercisable by that patron's personal representatives⁴.

1 See PARA 783A.1

2 See PARA 818A.1.

3 *Ie* registered under the Patronage (Benefices) Measure 1986 in a register of patrons: *ibid* s 39(1). See PARA 783A.1.

4 *Ibid* s 21, which applies notwithstanding anything in s 3(8) (see PARA 802A).

Before exercising their right under s 21, the personal representatives must comply with the requirements of ss 8 and 9 (see PARAS 818A. 2, 3) as if they were the registered patron: s 21.

Section 21 applies to a registered patron of a shared benefice (see PARA 818A.15) other than Her Majesty or the possessor for the time being of the Duchy of Cornwall: s 35(3).

13. Exchange of benefices

Two incumbents may by instrument in writing agree to exchange their benefices¹ if the agreement of the following persons has been obtained: (a) the bishop of the diocese in which each benefice is, (b) any registered patron² whose turn it is to present to either of the benefices and (c) the parochial church council of the parish of each benefice, the agreement having in each case been given by resolution of the council³. This provision applies to a Crown benefice⁴.

1 See PARA 783A.1.

2 See PARA 818A.1.

3 Patronage (Benefices) Measure 1986 s 22(1). Where a registered patron whose turn it is to present to a benefice has agreed under s 22(1) to an exchange by the incumbent of that benefice, he is treated for the purposes of the 1986 Measure as having exercised that turn: s 22(2).

Where a benefice comprises two or more parishes (see PARA 783A.1) then, except in a case in which Sch 2 para 19 or 20 applies (see PARA 818A.14) s 22(1) is modified by Sch 2 para 18 by the substitution of 'every parish belonging to each benefice' for 'the parish of each benefice'.

4 Ibid s 35(8). See further PARA 818A.15.

14. Special provisions applicable to certain benefices

Certain provisions¹ of the Patronage (Benefices) Measure 1986 Pt II relating to the exercise of rights of presentation have effect subject to modifications in their application to (a) a benefice² which comprises two or more parishes³, (b) a benefice of which the parochial church council of the parish belonging to the benefice is the registered patron⁴ and (c) benefices held in plurality⁵.

Where, by a pastoral scheme⁶ or by a scheme made under the Church Representation Rules⁷, a team council is established in respect of a benefice which comprises more than one parish, the functions of the parochial church councils of those parishes under the 1986 Measure Pt II are exercisable by the team council⁸. Where by a pastoral scheme or by a scheme made under the Church Representation Rules, a joint parochial church council is established for all the parishes of a benefice, the functions of the parochial church councils of those parishes under the 1986 Measure Pt II are exercisable by the joint parochial church council⁹.

Where the parochial church council of the parish belonging to a benefice is the registered patron of the benefice, the 1986 Measure Pt II has effect in relation to that benefice as if the provisions requiring the appointment of parish representatives¹⁰ and the approval of such representatives to the making of an offer to present a priest to the benefice, and any other provisions referring to such representatives were omitted¹¹.

Where two or more benefices are held in plurality, the 1986 Measure Pt II has effect in relation to them as if they were a single benefice comprising two or more parishes¹².

1 The provisions affected are the Patronage (Benefices) Measure 1986 ss 7(4), 9(6), 11, 12, 16(3), 19(1) and 22(1).

2 See PARA 783A.1.

3 Ibid s 23(a). Detailed modifications are made by Sch 2 paras 2-18; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 27.

4 1986 Measure s 23(b). As to the modifications, see Sch 2 para 21.

5 Ibid s 23(c). As to the modifications, see Sch 2 para 22.

- 6 See PARA 856 et seq.
- 7 See PARA 389.
- 8 Ibid Sch 2 para 19.
- 9 Ibid Sch 2 para 20.
- 10 See PARA 818A.5.
- 11 Ibid Sch 2 para 21.
- 12 Ibid Sch 2 para 22.

15. Crown benefices

Subject to the following exceptions, the foregoing provisions of the Patronage (Benefices) Measure 1986 do not apply to any benefice the patronage or any share in the patronage of which is vested in or exercisable by Her Majesty, whether in right of Her Crown or Her Duchy of Lancaster or otherwise, or is vested in or exercisable by the possessor for the time being of the Duchy of Cornwall, whether Her Majesty or a Duke of Cornwall ('a Crown benefice')¹.

The provisions² relating to the notification of vacancies apply to a Crown benefice, and where the designated officer³ of a diocese receives a notice under those provisions in respect of a Crown benefice then (a) if the patronage is vested wholly in Her Majesty or the possessor for the time being of the Duchy of Cornwall or, in the case of a shared benefice⁴, if the right of presentation on the vacancy in question is exercisable by Her Majesty or the Duke of Cornwall, any parochial church council to which notice of the vacancy is given⁵ may send to Her Majesty or the Duke of Cornwall a statement describing the conditions, needs and traditions of the parish⁶, and a copy of any such statement must be sent to the bishop; (b) if the benefice is a shared benefice and the right of presentation on the vacancy in question is exercisable by a person other than Her Majesty or the Duke of Cornwall, certain provisions⁷ relating to the exercise of rights of presentation apply to the benefice⁸.

Provisions⁹ relating to the exchange of benefices apply to a Crown benefice¹⁰.

1 Patronage (Benefices) Measure 1986 s 35(1), which is expressed to be without prejudice to the application of ss 28 (see PARA 832), 31 (see PARA 826-830) to the Crown.

Without prejudice to the provisions of the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, the 1986 Measure s 35 applies to a benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor as it applies to a Crown benefice; accordingly any reference in s 35 to Her Majesty must be construed, in relation to any benefice the patronage or a share of the patronage of which is vested in the Lord Chancellor, as including a reference to the Lord Chancellor: s 36.

2 Ibid s 7 (see PARA 818A.1).

3 See PARA 818A.1.

4 A Crown benefice is a shared benefice if a share only in the patronage is vested in Her Majesty or the possessor for the time being of the Duchy of Cornwall: ibid s 35(3).

5 Ibid under ibid s 7(4).

6 'Conditions, needs and traditions of the parish' includes the terms of any resolution under the Priests (Ordination of Women) Measure 1993 s 3(1) (see PARA 657B.2) affecting the benefice in question).

7 Ibid 1986 Measure ss 8-21.

8 Ibid s 35(7); Priests (Ordination of Women) Measure 1993 Sch 3 para 13.

9 Ibid 1986 Measure s 22 (see PARA 818A.13).

10 Ibid s 35(8). Where the consent of Her Majesty or the possessor for the time being of the Duchy of Cornwall is required by s 22, that consent may be given in accordance with the Pastoral Measure 1983 s 81(2) (with necessary modifications) (s 81(2) amended by Constitutional Reform Act 2005 Sch 4 para 159, Sch 18 Pt 2 (partly in force: SI 2006/1014)): 1986 Measure s 35(8).

16. Notices and other documents

Provisions have been made relating to notices and other documents required or authorised by the Patronage (Benefices) Measure 1986 to be served or sent¹.

1 See the Patronage (Benefices) Measure 1986 s 37 and the Patronage (Benefices) Rules 1987, SI 1987/773 (see PARA 783A.11).

17. Patronage (Procedure) Committee

The Patronage (Procedure) Committee has power to make rules with regard to any matter of procedure arising under the Patronage (Benefices) Measure 1986 and in particular with regard to any matter to be prescribed under the Measure¹.

1 See the Patronage (Benefices) Measure 1986 s 38 (see PARA 783A.12).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/819. How right may be disturbed.

(iv) Disturbance of Patronage

819. How right may be disturbed.

The right of the patron of a benefice may be disturbed by a pretending patron if he presents a clergyman to the benefice; by a clergyman presented by a pretending patron if he demands or obtains institution or admission to the benefice; and by the bishop if he either institutes or admits a clergyman presented by a pretending patron, or, without any adverse presentation having been made, collates a clergyman selected by himself or refuses or unduly delays¹ to institute or admit a clergyman presented by the patron. Where both the patron and a pretending patron make presentations, the church of the benefice becomes litigious². If a clergyman is instituted or admitted to a benefice upon the presentation of one who is not the lawful patron it is called a usurpation.

1 2 Roll Abr 366.

2 3 Bl Com (14th Edn) 243-246; Watson, Clergyman's Law (4th Edn) 227, 228. See PARA 822 note 3 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/820. Remedies for disturbance of patronage.

820. Remedies for disturbance of patronage.

The remedies for disturbance of right of patronage are an appeal to the court¹, an action in the nature of a *quare impedit*², a suit of *duplex querela*³, and a *jus patronatus*⁴. Pending a dispute as to the patronage the presentation, institution and induction of the clergyman of one of the claimants can be restrained by injunction⁵.

1 The court is constituted under the Benefices Act 1898, s 3: see PARA 821 post.

2 Watson, Clergyman's Law (4th Edn) 238-305: see PARA 822 post.

3 Watson, Clergyman's Law (4th Edn) 231-235: see PARA 823 post.

4 Watson, Clergyman's Law (4th Edn) 235-237: see PARA 824 post.

5 *Potter v Chapman* (1750) Amb 98; *Nicholson v Knapp* (1838) 9 Sim 326; *Greenslade v Dare* (1853) 17 Beav 502. A spoliation might also be brought in an ecclesiastical court whereby the profits of the benefice may be sequestered till the right be determined: Ayl Par 495; Watson, Clergyman's Law (4th Edn) 308.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/821. Appeal from refusal to institute or admit.

821. Appeal from refusal to institute or admit.

Where a bishop refuses to institute or admit a presentee to a benefice on any ground of unfitness or disqualification of the presentee sufficient in law to justify the refusal¹, except a ground of doctrine or ritual, the bishop must signify in writing the refusal and the grounds to the person who presented and to the presentee, and within one month after the signification either of these persons may require that the matter be heard by a court consisting of the archbishop of the province and a judge of the Supreme Court nominated by the Lord Chancellor². The bishop must be made a party to the proceedings³. The court thus constituted may direct the institution or admission of the presentee or uphold the bishop's refusal, and its judgment is final⁴.

If, in any case to which the foregoing applies, the bishop has signified his refusal in the manner so provided, no proceedings in the nature of *quare impedit* or *duplex querela* may be taken in any other court in respect of the refusal⁵.

1 le including the grounds set out in the Benefices Act 1898, s 2; and the Benefices Measure 1972, s 1. For these and other grounds of unfitness or disqualification, see PARA 839 et seq post.

2 Benefices Act 1898, s 3 (1); Benefices Rules 1926, S.R. & O. 1926 No. 357, r 16; Revised Canons Ecclesiastical, Canon C10 para 8. For the constitution and procedure of the court, see PARAS 1273, 1342, 1345 post.

3 Benefices Act 1898, s 3 (1).

4 Ibid s 3 (2). The judge decides all questions of law and finds the facts alleged as reasons of unfitness or disqualification: s 3 (2). The archbishop's official principal institutes or admits if within a month after judgment in that behalf the bishop fails to do so: s 3 (4).

5 Ibid s 3 (5).

UPDATE

821 Appeal from refusal to institute or admit

TEXT AND NOTE 2--Now within one month after the signification either of these persons may appeal to the archbishop and the Dean of the Arches and Auditor who must decide whether to uphold the bishop's refusal or direct him to institute or admit the presentee: s 3(1) (amended by Patronage (Benefices) Measure 1986 s 18(1)(a)). 1926 Rules revoked: Patronage (Benefices) Rules 1987, SI 1987/773 r 16. The Dean of the Arches and Auditor may nominate a chancellor to hear, in his place, an appeal under the 1898 Act s 3 with the archbishop, and where any such nomination is made any reference in s 3(1) or (4) to the dean must be construed accordingly: s 3(6) (amended by 1986 Measure s 18(1)(d)).

'Archbishop' means the archbishop of the province in which the benefice (see PARA 783A.1) is or, where the benefice is in the diocese of the archbishop of that province or the archbishopric of that province is vacant or the archbishop is patron of that benefice, the archbishop of the other province: 1898 Act s 3(7) (amended by 1986 Measure s 18(1)(d)).

TEXT AND NOTE 3--This no longer applies: s 3(1) (amended by 1986 Measure s 18(1)(a)).

TEXT AND NOTE 4--Replaced. Any proceedings on an appeal under the 1898 Act s 3 must be held in public and any party to such proceedings is entitled to appear by an authorised person: s 3(2) (amended by 1986 Measure s 18(1)(b); and Legal Services Act 2007 Sch 21 para 14(a)). 'Authorised person' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise a right of audience (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512): 1898 Act s 3(2A) (added by Legal Services Act 2007 Sch 21 para 14(b)).

NOTE 4--Reference to judgment is now to a decision of the archbishop and dean: 1898 Act s 3(4) (amended by 1986 Measure s 18(1)(c)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/822. Action of quare impedit.

822. Action of quare impedit.

An action in the nature of a quare impedit¹ can be brought in the temporal court by the patron where the bishop refuses to institute or admit his presentee on the ground of unfitness in respect of doctrine or ritual², or on the ground of the patron's want of title, or of the church having become litigious³, or if he refuses on some other ground and fails to signify his refusal to the patron and the presentee in writing⁴. If the disturbance arises from the action of the bishop alone, he alone is made defendant to the action⁵, but if another clergyman has been presented by a pretending patron the action must be brought against the pretending patron⁶, and it is important to join his clergyman and the bishop as co-defendants⁷, for if the clergyman has already been instituted or admitted to the benefice and is not joined in the action a judgment in favour of the patron will not extend to remove the clergyman, and the patron, though successful, will therefore lose the present turn⁸.

If the action is not determined within six months after the benefice became void the bishop, unless he is made a party to it, will become entitled to collate to the benefice by lapse⁹.

If successful the plaintiff is entitled to judgment ordering the bishop to admit his presentee¹⁰. If proceedings were begun within six months of his induction, judgment must be given for the removal of any incumbent instituted to fill the vacancy, his institution having been on a presentation made without title¹¹.

Where the Crown presents to a benefice which is full of an incumbent effect must not be given to the presentation without judgment having been given for the removal of the incumbent in proceedings by way of quare impedit brought by or on behalf of the Crown¹².

1 For forms, see Court Forms. The procedure is as in a normal action in the High Court begun by writ of summons.

2 Cf. the Benefices Act 1898, s 3 (1); *Heywood v Bishop of Manchester* (1884) 12 QBD 404; *Gore-Booth v Bishop of Manchester* [1920] 2 KB 412; affd. 89 LJB 1128, CA.

3 Statute Law (Repeals) Act 1969, s 2 (1), (3), replacing 13 Edw. 1 (Statute of Westminster the Second) (1285), c. 5; 3 BI Com (14th Edn) 245-249. A church is said to become litigious if two presentations are offered to the bishop upon the same avoidance by persons claiming adversely to one another: 3 BI Com (14th Edn) 245, 246.

4 Benefices Act 1898, s 3 (1), (5); Benefices Rules 1926, S.R. & O. 1926 No. 357, r 16.

5 Where a bishop refuses or neglects to act upon the nomination of a fit person, a court of equity may either order the bishop to admit and license the nominee or, preferably, direct that a writ be issued to the archbishop commanding him to admit a fit and proper person upon the presentation of the patron: *Notley v Bishop of Birmingham* (No. 2) [1931] 1 Ch 529.

6 *Hall v Bishop of Bath and Wells* (1589) 7 Co Rep 25 b; *Elvis v Archbishop of York, Taylor and Bishop* (1619) Hob 315 at 316.

7 1 Burn's Ecclesiastical Law (4th Edn) 43; 2 Burn's Ecclesiastical Law (4th Edn) 358; and see the Statute Law (Repeals) Act 1969, s 2 (1), and the text to note 11 supra, as to proceedings begun within six months of induction.

8 *Lancaster v Lowe* (1605) Cro Jac 92, sub nom. *Boswel's Case* 6 Co Rep 48b.

9 *Brickhead v Archbishop of York* (1617) Hob 197 at 201; *Elvis v Archbishop of York, Taylor and Bishop* (1619) Hob 315 at 320. If lapse to the bishop is barred by his being made a defendant, the right by lapse will

not pass on to the archbishop and the Sovereign: *Lancaster v Lowe* (1605) Cro Jac 92, sub nom. *Boswel's Case* 6 Co Rep 48b.

10 *Portman's Case* (1598) 7 Co Rep 27b; 3 Bl Com (14th Edn) 249. For a form of judgment, see Court Forms.

11 Statute Law (Repeals) Act 1969, s 2 (1). The provisions of s 2 are to have effect in place of 13 Edw. 1 (Statute of Westminster the Second) (1285), s 5; Prerogativa Regis (temp. incert.), c. 10; and 13 Ric. 2, Stat. 1, c. 1 (the King's Presentation to Benefices) (1389-90): Statute Law (Repeals) Act 1969, s 2 (3).

12 *Ibid* s 2 (2). This applies to such proceedings whether or not they are commenced within the six-month period: s 2 (2).

UPDATE

822 Action of quare impedit

NOTE 4--1926 Rules revoked: Patronage (Benefices) Rules 1987, SI 1987/773, r 16.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/823. Suit of duplex querela.

823. Suit of duplex querela.

If the bishop refuses institution or admission on the grounds of doctrine or ritual or, refusing on some other ground sufficient in law, fails to signify his refusal to the patron and the presentee in writing or, apparently, refuses on some ground insufficient in law to justify the refusal¹ the presentee may bring a suit of duplex querela² against the bishop before the Court of Ecclesiastical Causes Reserved³. Appeal lies to a Commission of Review⁴. If another clergyman has also been presented he is made a co-defendant⁵. The suit, however, cannot be brought after another clergyman has been inducted to the benefice, since a temporal right has been then acquired which can only be questioned in a temporal court⁶.

1 See the Benefices Act 1898, s 3 (1), (5); Benefices Act 1972, s 2. For the grounds of unfitness or disqualification, see PARA 839 et seq post.

2 le double complaint. As to the procedure, see PARA 1346 post. The proceedings, being also available in other cases of denial or delay of justice on the part of an inferior ecclesiastical judge or Ordinary, were so called because they were usually instituted against both the judge and the party at whose instance the denial or delay of justice took place: Termes de la Ley 271. A clergyman who, as patron, claims to present himself to a benefice cannot proceed to enforce his claim by a suit of duplex querela and an action of quare impedit concurrently: *Walsh v Bishop of Lincoln* (1874) LR 4 A & E 242.

3 Ecclesiastical Jurisdiction Measure 1963, s 10 (1) (b). The jurisdiction of the provincial courts and the Judicial Committee of the Privy Council to hear such suits was abolished by s 82 (1), (2) (b). As to the Court of Ecclesiastical Causes Reserved, see PARA 1289 post.

4 Ibid s 11 (2): see PARA 1292 post.

5 3 Bl Com (14th Edn) 246; 1 Burn's Ecclesiastical Law (4th Edn) 159-162; *Gorham v Bishop of Exeter* (1849) 13 Jur 238 at 887; on appeal (1850) 14 Jur 443, PC; *Gorham v Bishop of Exeter* (1850) 15 QB 52.

6 *Hutton's Case* (1615) Hob 15, sub nom. *Rowth v Bishop of Chester* Moore KB 861; *Middleton v Lawte* (1617) Moore KB 879; 1 Burn's Ecclesiastical Law (4th Edn) 162.

UPDATE

823 Suit of duplex querela

NOTE 3--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/824. Jus patronatus.

824. Jus patronatus.

A jus patronatus is a process instituted by the bishop, if he so thinks fit, at the request of either of the parties claiming to be patrons, or either of the clergymen presented by them, when the church is litigious¹ or, when it is not litigious, if he has a doubt as to the title of the patron claiming to present². Proceedings upon a jus patronatus are cognisable by the consistory court³.

1 For the meaning of 'litigious', see PARA 822 note 3 ante.

2 Clerke, *Praxis in Curiis Ecclesiasticis* xcvi-c; 1 Burn's *Ecclesiastical Law* (4th Edn) 24-28; 3 Bl Com (14th Edn) 246; Watson, *Clergyman's Law* (4th Edn) 235-237; *Elvis v Archbishop of York, Taylor and Bishop* (1619) Hob 315 at 317, 318.

3 See PARA 1284 post. For the procedure, see PARA 1347 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(iv) Disturbance of Patronage/825. Limitation of time for recovery.

825. Limitation of time for recovery.

Actions to enforce rights of patronage are barred, and the rights themselves extinguished¹, at the end of whichever of the two following periods is the longer: (1) a period during which three clergymen in succession have held the benefice adversely to the right of patronage it is sought to enforce²; or (2) a period of sixty years during which the benefice has been held adversely³. Moreover, in no case may an action be brought to enforce the right after the expiration of a period of 100 years during which the benefice has been held adversely to right or to the right of some person entitled to a preceding estate or interest or an undivided share or alternate right of presentation or gift held or claimed under the same title⁴.

The foregoing provisions apply to the Crown or a bishop claiming rights of patronage, but do not affect the right of the Crown or of a bishop to present or collate to any ecclesiastical benefice by reason of lapse⁵.

1 Limitation Act 1939, s 16.

2 Ibid s 14 (1) (a). When a benefice is avoided because the incumbent is made a bishop the incumbency of the new clergyman is deemed, for this purpose, to be a continuation of the prior incumbency: s 14 (2).

3 Ibid s 14 (1) (b). Where a benefice becomes void after being held adversely and a clergyman is presented or collated to it by Her Majesty or the Ordinary, the clergyman's possession is deemed to be adverse: s 14 (2).

4 Ibid s 14 (1).

5 Ibid s 14 (1). As to rights upon lapse, see PARA 826 et seq post.

UPDATE

825 Limitation of time for recovery

TEXT AND NOTES--1939 Act ss 14, 16, consolidated in Limitation Act 1980 s 25, no longer have effect: Patronage (Benefices) Measure 1986 ss 1(2), 4(3).

NOTE 1--Consolidated in Limitation Act 1980; see s 19.

NOTES 2-5--Now ibid s 25.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(v) Lapse of Patronage/826. Lapse of patronage by no-exercise.

(v) Lapse of Patronage

826. Lapse of patronage by no-exercise.

If the patron of a benefice neglects to present to it within the allowed time, the patronage for that turn lapses to the bishop; if a bishop neglects to collate to a benefice within the allowed time after the patronage has lapsed to him or, being the patron, within the allowed time after it has become void, the patronage for that turn lapses to the archbishop of the province; and if an archbishop neglects to present to a benefice within the allowed time after the patronage has lapsed to him or, being the patron, within the allowed time after it has become void, the patronage for that turn lapses to the Queen as supreme patron¹. The patronage of a benefice which is originally in the Queen or has come to her or to a preceding Sovereign by lapse is not lost by any delay in its exercise².

The time allowed to the patron, the bishop or the archbishop is in each case six calendar months³.

Where any benefice is dissolved by a pastoral scheme⁴, or where a chapel of ease becomes a parish church by virtue of a pastoral scheme, the rights of patronage of the benefice and any rights of patronage of the chapel of ease cease to exist⁵.

1 2 Roll Abr 362-368; 2 Bl Com (14th Edn) 275-278; Gib Cod 768-770; *Beverley v Bishop of Canterbury and Cornwall* (1586) 1 and 148; *Thorneton v Savill* (1622) Palm 306 at 311. If patronage has lapsed to a bishop who dies or is translated or deprived before he exercises it, the patronage devolves on the archbishop of the province: *Commendam Case*, *Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140 at 154, Ex Ch; Gib Cod 770. As to lapse of the right of patronage in relation to guild churches, see the City of London (Guild Churches) Act 1952, s 10, and PARA 601 ante.

2 2 Co Inst 273; 2 Bl Com (14th Edn) 276, 277; Gib Cod 770; *R v Archbishop of Canterbury* (1634) Cro Car 354 at 355.

3 One half a year or 182 days: 2 Co Inst 361; 2 Bl Com (14th Edn) 276; *Bishop of Peterborough v Catesby* (1607) Cro Jac 166, overruling *Albany and Bishop of St Asaph's Case* (1588) 1 Leon 31. The time is exclusive of the day from which it begins to run: *Cornwallis v Hood* (1665) Cart 33 at 44. This decision seems to have been overlooked by Sir William Grant MR when he made his observation to the contrary in *Lester v Garland* (1808) 15 Ves 248 at 254.

4 As to pastoral schemes, see PARA 856 et seq post.

5 Pastoral Measure 1968, s 32 (5).

UPDATE

826-830 Lapse of Patronage

Without prejudice to the Patronage (Benefices) Measure 1986 s 16 (see PARA 818A.8), any rule of law whereby the right of patronage of a benefice lapses to a bishop or archbishop or to Her Majesty in right of Her Crown no longer has effect: *ibid* s 31(1). Nothing in s 31 affects any right of presentation which on a vacancy in a benefice is exercisable by Her Majesty (a) by reason of the appointment to a diocesan bishopric of the incumbent of the benefice concerned or (b) by reason of a vacancy in the see of a

diocesan bishop who is a registered patron of the benefice concerned: s 31(2). As to the meaning of 'registered patron', see PARA 818A.1.

The provisions cited in PARAS 826-830 are largely repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(v) Lapse of Patronage/827. Calculation of time.

827. Calculation of time.

The bishop must notify the patron of a benefice of a vacancy or impending vacancy in the benefice¹. If he notifies the patron of an impending vacancy time begins to run, in cases of death or cession², from the actual vacation. In cases of death this is from the date of death, except where the incumbent dies abroad, in which case the time is to be reckoned from the day on which the patron might reasonably have known of it³. In cases of cession, the vacation occurs on admission to the benefice or cathedral preferment⁴.

If the bishop notifies the patron of an actual vacancy time begins to run from the date of notification⁵. Similarly in cases of resignation or deprivation, even though the bishop may have notified an impending vacancy, the time begins to run only from the day when the patron receives notice from the bishop of the resignation or deprivation⁶. Where the bishop is the patron time begins to run from the date of the vacancy except where the bishop is the patron time begins to run from the date of the vacancy except where the incumbent dies abroad, in which case it is reckoned from the day on which the patron might reasonably have known of it⁷.

1 See PARA 818 ante.

2 As to avoidance of benefices by cession, see PARA 930 post.

3 2 Roll Abr 363. There is probably no difference today.

4 See the Pastoral Measure, 1968, s 88 (4), from which this would seem to follow: see PARA 853 note 2 post.

5 This is the effect of the Benefices (Exercise of Rights of Presentation) Measure 1931, ss 1, 5.

6 2 Roll Abr 364, 365; 2 Bl Com (14th Edn) 277; Clergy Ordination Act 1804, s 1; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 2 (deprivation due to incumbent's want of age). Notice is required even though the patron is a party to the suit brought to enforce deprivation: *Green's Case* (1602) 6 Co Rep 29a; cf. *R v Bishop of Lincoln* (1582) 1 And 62. An intimation of the refusal affixed to the door of the church of the benefice is not a sufficient notice to the patron except, perhaps, where he cannot be found: *Bacon v Bishop of Carlisle* (1576) 3 Dyer 346a; 2 Roll Abr 365. The patron is not entitled to notice if his presentee refuses or neglects to be admitted to the benefice: *R v Bishop of Lincoln* supra at 63.

7 2 Roll Abr 363.

UPDATE

826-830 Lapse of Patronage

Without prejudice to the Patronage (Benefices) Measure 1986 s 16 (see PARA 818A.8), any rule of law whereby the right of patronage of a benefice lapses to a bishop or archbishop or to Her Majesty in right of Her Crown no longer has effect: *ibid* s 31(1). Nothing in s 31 affects any right of presentation which on a vacancy in a benefice is exercisable by Her Majesty (a) by reason of the appointment to a diocesan bishopric of the incumbent of the benefice concerned or (b) by reason of a vacancy in the see of a diocesan bishop who is a registered patron of the benefice concerned: s 31(2). As to the meaning of 'registered patron', see PARA 818A.1.

The provisions cited in PARAS 826-830 are largely repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(v) Lapse of Patronage/828. Suspension of running of time.

828. Suspension of running of time.

The running of time for lapse is suspended if the bishop collates or the archbishop presents before the right has lapsed to him¹, or if the bishop is made a party to an action in good faith in quare impedit or a suit of duplex querela², but is not suspended by a feigned and baseless action in quare impedit brought against himself³, or by an action in quare impedit to which he is not a party⁴. The bishop cannot bring about a lapse by delaying his examination or acceptance of the presentee⁵, and in reckoning the time for lapse no account is to be taken, in the case of the first and second presentations to a benefice by a patron in respect of the same vacancy, of the period between the patron's presentation and the bishop's refusal to institute or admit the presentee, or of the period between the bishop's refusal to institute or admit and the court's decision⁶, upon such refusal; nor, in the case of a bishop having a right to collate to a benefice, of the period between the service of the notice on the churchwardens⁷ and the expiration of a month from that service⁸. If the bishop withholds his approval of a presentee by virtue of his powers⁹, the running of time is suspended during any period during which the bishop's decision is under review by the archbishop¹⁰.

Time does not run for the purposes of lapse when the exercise of the right of presentation has been suspended¹¹, or when the right is restricted¹² pending the making of pastoral schemes and orders relating to the creation, alteration or dissolution of benefices, the holding of benefices in plurality and the establishment, termination or alteration of team and group ministries¹³. When the running of time for lapse is postponed as against the bishop, the periods for lapse to the archbishop and the Queen are correspondingly postponed¹⁴.

1 2 Roll Abr 350, 368.

2 *Elvis v Archbishop of York, Taylor and Bishop* (1619) Hob 315 at 320; Co Litt 344b; 3 Bl Com (14th Edn) 247.

3 *Brickhead v Archbishop of York* (1617) Hob 197 at 200.

4 *Brickhead v Archbishop of York* (1617) Hob 197 at 201; 2 Roll Abr 365; *Wilson v Dennison* (1750) Amb 82, per Lord Hardwicke LC.

5 2 Roll Abr 366; *Bishop of Salisbury v Philips* (1700) 1 Ld Raym 535; *Wilson v Dennison* (1750) Amb 82.

6 Ie the court constituted under the Benefices Act 1898, see PARA 821 ante.

7 See *ibid* s 2 (2).

8 *Ibid* s 5.

9 Ie his powers under the Benefices (Exercise of Rights of Presentation) Measure 1931: see PARA 818 ante.

10 *Ibid* s 5.

11 Ie under the Pastoral Measure 1968, s 67: see PARA 813 ante.

12 Ie under *ibid* s 69: see PARA 816, 817 ante.

13 *Ibid* s 72 (1). This section binds the Crown: s 72 (2).

14 Co Litt 344b, 345a; 2 Bl Com (14th Edn) 278; *R v Bishop of Lincoln* (1582) 1 And 62; *Lancaster v Lowe* (1605) Cro Jac 92 at 93; *Commendam Case, Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140 at 154, Ex Ch. See also PARAS 826, 827 ante.

UPDATE

826-830 Lapse of Patronage

Without prejudice to the Patronage (Benefices) Measure 1986 s 16 (see PARA 818A.8), any rule of law whereby the right of patronage of a benefice lapses to a bishop or archbishop or to Her Majesty in right of Her Crown no longer has effect: *ibid* s 31(1). Nothing in s 31 affects any right of presentation which on a vacancy in a benefice is exercisable by Her Majesty (a) by reason of the appointment to a diocesan bishopric of the incumbent of the benefice concerned or (b) by reason of a vacancy in the see of a diocesan bishop who is a registered patron of the benefice concerned: s 31(2). As to the meaning of 'registered patron', see PARA 818A.1.

The provisions cited in PARAS 826-830 are largely repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(v) Lapse of Patronage/829. Presentation notwithstanding lapse.

829. Presentation notwithstanding lapse.

If, after the patronage has lapsed to the bishop, the patron presents before the bishop collates, the presentation is as effectual as if it had been made within the allowed time¹, and the same applies if the bishop allows the patronage to lapse to the archbishop and the patron presents before a presentation is made by the archbishop². After lapse to the archbishop, however, a bishop loses his right to collate by lapse, since his right is merely temporary and accidental³. After lapse to the Queen the patron cannot defeat the Queen's right by a prior presentation; it will be overridden by a subsequent presentation of the Queen, and if the patron's presentee is admitted to the benefice the Queen may remove him by an action in quare impedit and present notwithstanding the admission⁴. If the patron's presentee is admitted and is not so removed during his incumbency, however, the Queen's right is lost, for it was only for that turn⁵. If the Queen dies before exercising the right it will descend to her successor⁶.

1 2 Co Inst 273; 2 Roll Abr 367, 368; *Anon* (1568) 3 Dyer 277a, pl 56; 2 Bl Com (14th Edn) 276, 277; *Commendam Case, Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140, Ex Ch; *Wilson v Dennison* (1750) Amb 82.

2 2 Bl Com (14th Edn) 276, 277; *Booton v Bishop of Rochester* (1618) Hut 24. If after lapse to the archbishop the bishop collates, however, the collation, though bad as against the archbishop, will prevent the patron from presenting: 2 Roll Abr 350, 368.

3 2 Bl Com (14th Edn) 277; 2 Roll Abr 350, 368.

4 See the Statute Law (Repeals) Act 1969, s 2, and PARA 822 ante.

5 2 Bl Com (14th Edn) 277; *Baskerville's Case* (1585) 7 Co Rep 28a; *Bishop of Lincoln's Case* (1588) Owen 89; *R v Archbishop of Canterbury* (1634) Cro Car 354. In the case of churches, curacies and chapels augmented by Queen Anne's Bounty and made perpetual cures and benefices by the Queen Anne's Bounty Act 1714, s 4, however, a nomination by the patron is good even after a lapse to the Crown, if made before the Crown has taken advantage of it: s 7.

6 *R v Archbishop of Canterbury* (1634) Cro Car 354.

UPDATE

826-830 Lapse of Patronage

Without prejudice to the Patronage (Benefices) Measure 1986 s 16 (see PARA 818A.8), any rule of law whereby the right of patronage of a benefice lapses to a bishop or archbishop or to Her Majesty in right of Her Crown no longer has effect: *ibid* s 31(1). Nothing in s 31 affects any right of presentation which on a vacancy in a benefice is exercisable by Her Majesty (a) by reason of the appointment to a diocesan bishopric of the incumbent of the benefice concerned or (b) by reason of a vacancy in the see of a diocesan bishop who is a registered patron of the benefice concerned: s 31(2). As to the meaning of 'registered patron', see PARA 818A.1.

The provisions cited in PARAS 826-830 are largely repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(v) Lapse of Patronage/830. Lapsed patronage of vacated see.

830. Lapsed patronage of vacated see.

Where the bishop's see becomes vacant before he has collated to a benefice by lapse, the lapsed patronage, being not an interest but a spiritual trust, devolves on the archbishop of the province as guardian of the spiritualities of the see¹.

¹ Gib Cod 770; 2 Burn's Ecclesiastical Law (4th Edn) 360.

UPDATE

826-830 Lapse of Patronage

Without prejudice to the Patronage (Benefices) Measure 1986 s 16 (see PARA 818A.8), any rule of law whereby the right of patronage of a benefice lapses to a bishop or archbishop or to Her Majesty in right of Her Crown no longer has effect: *ibid* s 31(1). Nothing in s 31 affects any right of presentation which on a vacancy in a benefice is exercisable by Her Majesty (a) by reason of the appointment to a diocesan bishopric of the incumbent of the benefice concerned or (b) by reason of a vacancy in the see of a diocesan bishop who is a registered patron of the benefice concerned: s 31(2). As to the meaning of 'registered patron', see PARA 818A.1.

The provisions cited in PARAS 826-830 are largely repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(2) PATRONAGE/(vi) Reorganisation Areas/831. Patronage in reorganisation areas.

(vi) Reorganisation Areas

831. Patronage in reorganisation areas.

Under the Reorganisation Areas Measure 1944¹ the Church Commissioners were empowered to declare as ecclesiastical reorganisation areas parishes which had suffered war damage or in which, by reason of causes attributable to the second world war or as a result of planning schemes, material changes in the number or situation of the population had occurred². The commissioners could make reorganisation schemes for such areas on proposals received by them from the bishop and the diocesan reorganisation committee³ before 21st March 1957⁴. Schemes confirmed by the commissioners and not disapproved by either House of Parliament had the force of law⁵. The schemes could provide for the dissolution of a benefice⁶, so that the right of patronage of that benefice was extinguished: but further provision might have been made to modify existing rights of patronage or to create valid new ones⁷. Where a reorganisation scheme provided for the formation of a new benefice it had to make provision for the rights of patronage of that benefice⁸, and such rights could not be sold or otherwise transferred for valuable consideration⁹. Interested patrons agree that a reorganisation scheme should provide for the exchange, surrender or assignment of their patronage rights in order to facilitate any rearrangement of pastoral supervision to be effected by the scheme¹⁰.

When a benefice in a reorganisation area became vacant, or was vacant when the patron received notice of the order declaring the area to be a reorganisation area, the patron might not present to the benefice without the bishop's consent until after 21st March 1957¹¹. If the bishop withheld his consent he had to make such provision as he deemed necessary for the cure of souls during the vacancy, after consulting the patron and the parochial church council¹². Whilst this restriction on the right of patronage was in force, time did not run for the purposes of lapse¹³.

1 The Reorganisation Areas Measure 1944 was repealed by the Pastoral Measure 1968, s 95, Sch. 9.

2 Reorganisation Areas Measure 1944, s 1 (repealed). Parishes contiguous or adjacent to such parishes might also be included: s 1 (2) (b) (repealed).

3 Ibid s 5 (repealed). As to the submission of proposals to the bishop by the committee, see s 4 (repealed).

4 Ibid s 57 (2); Reorganisation Areas Measure 1944 (Amendment) Measure 1954, s 2 (both repealed).

5 Reorganisation Areas Measure 1944, s 8 (1) (repealed).

6 Ibid s 10 (1) (repealed).

7 Ibid ss 12, 13 (repealed).

8 Ibid s 12 (1) (repealed).

9 Ibid s 12 (4) (repealed).

10 Ibid s 13 (repealed). Any such exchange, surrender or assignment was not a transfer for the purposes of the Benefices (Transfer of Rights of Patronage) Measure 1930: Reorganisation Areas Measure 1944, s 14 (1) (repealed).

11 Ibid s 38 (1) proviso (a); Reorganisation Areas Measure 1944 (Amendment) Measure 1954, s 1 (both repealed).

12 Reorganisation Areas Measure 1944, s 38 (1) proviso (c) (repealed).

13 Ibid s 38 (1) proviso (b); Reorganisation Areas Measure 1944 (Amendment) Measure 1954, s 1 (both repealed).

UPDATE

831 Patronage in reorganisation areas

NOTE 10--1930 Measure repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(i) Simony/832. Penalties and disability on simony.

(3) FILLING OF BENEFICES

(i) Simony

832. Penalties and disability on simony.

Simony, so called from Simon Magus¹, includes² the buying or selling of holy orders or of an ecclesiastical benefice or admission to a benefice³. The procuring or acceptance of the presentation, institution, collation, induction or admission to a benefice in consideration of any money, profit or benefit, direct or indirect, or of any promise, agreement or assurance of or for such money, profit or benefit is simoniacal and void⁴. Where it takes place the Queen may present or bestow the benefice for that turn, and every person and body giving or taking any such money, profit or benefit, or making or taking any such promise, agreement or assurance is liable, on summary conviction, to a fine not exceeding £100⁵, and the person who so corruptly procures or accepts the benefice becomes thenceforth disabled in law from holding it⁶. Patrons and clergymen innocent of simony are not to be prejudiced by former simoniacal presentations or promotions⁷, and leases made in good faith by simonists for valuable consideration to tenants without notice of the simony are valid⁸.

1 See Acts 9:18, 19.

2 The exact limits of the offence of simony in English law are perhaps not settled. Any trafficking for money in spiritual things has at times been called simony: see inter alia Dictionary of Christian Antiquities, Simony.

3 3 Co Inst 153-156; 7 Bac Abr 229, Simony; 2 Bl Com (14th Edn) 278-280; Com Dig, Esglise (N3). As to simoniacal ordination, see PARA 661 ante; and as to simoniacal exchange and resignation of benefices, see PARAS 925, 929 post.

4 Simony Act 1588, s 4. For acts which are simoniacal, see PARA 833 post.

5 Ibid s 4; Common Informers Act 1951, s 1 (3). As against a patron who has been guilty of simony, the Sovereign's right to present is not lost by the clergyman simoniacally promoted having died in undisturbed possession of the benefice: *Winchcombe v Bishop of Winchester and Pulleston* (1616) Hob 165. An incumbent who sells a curacy is liable to deprivation: *Bishop of St David's v Lucy* (1699) Carth 484. The penalty is not incurred where the simoniacal presentation, though drawn up and sent in, is withdrawn before it is submitted to the bishop: *Greenwood v Woodham* (1841) 2 Mood & R 363.

6 Simony Act 1588, s 4; 3 Co Inst 154; *Baker v Rogers* (1600) Cro Eliz 788; *Lee v Merest* (1869) 39 LJ Eccl 53. He can never afterwards hold that benefice, but is eligible for another (*R v Bishop of Norwich, Cole and Saker* (1615) Cro Jac 385 at 386; Com Dig, Esglise (N3)), unless incapacitated by a censure under the Ecclesiastical Jurisdiction Measure 1963, ss 49-51. If the simoniacally presented clergyman has been admitted to the benefice and does not voluntarily resign, he may be removed by an action in quare impedit (*R v Bishop of Norwich, Cole and Saker* supra), or by an action of possession brought by the Sovereign's presentee after admission to the benefice (*Doe d Watson v Fletcher* (1828) 8 B & C 25).

7 Simony Act 1688, s 1.

8 Ibid s 2. A tenant to an incumbent cannot impeach the incumbent's title as landlord on the ground of simony: *Cooke v Loxley* (1792) 5 Term Rep 4.

UPDATE

832 Penalties and disability on simony

NOTE 4--Where a benefice becomes void under s 4 presentation to the benefice on that vacancy must be made by the diocesan board of patronage (see PARA 790): Patronage (Benefices) Measure 1986 s 28.

TEXT AND NOTE 5--The words 'Where it takes place the Queen may present or bestow the benefice for that turn' are repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(i) Simony/833. Acts which are simoniacal.

833. Acts which are simoniacal.

A transaction may be simoniacal in the sense that it is tainted with simony and therefore void even though neither the patron nor the presentee is a party or privy to it¹. If, however, the presentee is not cognisant of it he is not himself guilty of simony, even if he is simoniacally promoted². A contract to pay money in consideration of being promoted to a benefice is void and cannot be enforced³.

The following acts have been held to be simoniacal: unless authorised by statute, the giving of a bond by a presentee on his presentation that he will resign the benefice at the request of the patron⁴; an agreement before presentation to give up a claim to some of the emoluments of the benefice⁵; and the selling of a curacy⁶. It has been held not to be simoniacal to sell an advowson when both vendor and purchaser knew the incumbent of the benefice was in extremis⁷.

1 *Baker v Rogers* (1600) Cro Eliz 788; *Hutchinson's Case* (1613) 12 Co Rep 101; *Boyer v High Commission Court* (1614) 2 Bulst 182; *Wilson v Bradshaw* (1624) 2 Roll Rep 463; *R v Trusset* (1667) 1 Sid 329; *Walker v Hammersly* (1684) 3 Lev 115; *R v Bishop of Norwich, Hide and Boughton* (1692) 3 Lev 337; *Whish v Hesse* (1831) 3 Hag Ecc 659.

2 *Wilson v Bradshaw* (1624) 2 Roll Rep 463; *Whish v Hesse* (1831) 3 Hag Ecc 659.

3 *Mackaller v Todderick* (1633) Cro Car 337 at 353, 361; *Byrte v Manning* (1635) Cro Car 425.

4 See *Fletcher v Lord Sondes* (1827) 3 Bing 501, HL; *Doe d Watson v Fletcher* (1828) 8 B & C 25.

5 *R v Bishop of Oxford* (1806) 7 East 600. The judges have differed on the question whether a presentation to the intent that the presentee might marry the patron's daughter was simoniacal: see *Stevens' Case* (1628) Litt 176 at 177.

6 *Bishop of St David's v Lucy* (1699) Carth 484.

7 *Smith v Shelbourn* (1599) Cro Eliz 685; *Barret v Glubb* (1776) 2 Wm Bl 1052; *Fox v Bishop of Chester* (1829) 6 Bing 1, HL. In such a case the bishop may be entitled to refuse to admit the first presentee: see PARA 841 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(i) Simony/834. Declaration against simony.

834. Declaration against simony.

A person who is about to be instituted or collated to any benefice or to be licensed to any perpetual curacy¹, lectureship or preachship must first make and subscribe in the presence of the archbishop or bishop by whom he is to be instituted, collated or licensed, or his commissary, the prescribed declaration against simony². A person who knowingly makes any false statement in this declaration is guilty of a criminal offence and is liable to be punished for perjury³; and if he commits a breach of the promissory part of the declaration⁴ he is guilty of an ecclesiastical offence⁵.

1 As to the conversion of perpetual curacies into vicarages, see PARA 771 ante.

2 Clerical Subscription Act 1865, s 5; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon C16 para 2. The declaration is also to be made and subscribed on all other occasions on which before that Act an oath against simony was required to be taken: Clerical Subscription Act 1865, s 10; Church of England (Worship and Doctrine) Measure 1974, Sch. 2. For the form of the declaration, see the Clerical Subscription Act 1865, s 2; Benefices Act 1898, s 1 (4), Schedule; Benefices Act 1898 (Amendment) Measure 1923, s 5; Revised Canons Ecclesiastical, Canon C16 para 2. A declaration against simony must also be made by an archbishop, bishop, dean, archdeacon or canon, before taking office: see Canon C16 para 1.

3 Perjury Act 1911, s 5.

4 The promissory part of the declaration (see note 2 supra) is that he will not at any time thereafter perform or satisfy any payment, contract or promise made in respect of the presentation of the benefice to him by any person without his knowledge or consent.

5 Benefices Act 1898, s 1 (5). Proceedings may then be taken under the Ecclesiastical Jurisdiction Measure 1963, s 18, Part IV (ss. 22-31): Benefices Act 1898, s 1 (5); Ecclesiastical Jurisdiction Measure 1963, Sch. 4: see PARA 1359 post. Other breaches of the law against simony were not triable under the Benefices Act 1898: *Beneficed Clerk v Lee* [1897] AC 226, PC.

UPDATE

834 Declaration against simony

TEXT AND NOTES--This declaration has been abolished: Church of England (Miscellaneous Provisions) Measure 1976 s 1, Schedule; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/835. Filling of benefice by presentation.

(ii) Presentation to Benefice

835. Filling of benefice by presentation.

A vacancy or impending vacancy in a benefice must be notified by the bishop to the patron and the parochial church council¹. Thereafter, except where the bishop collates by reason either of being himself the patron or of the right of presentation lapsing to him², the first legal step towards filling a vacant benefice³ is the presentation of a fit clergyman to the bishop by the patron or other person entitled to present⁴, although a person designated or selected under a pastoral scheme or order as the incumbent of a benefice need not be presented or collated⁵, and the first incumbent of a new benefice created by the union of two or more benefices under a pastoral scheme is deemed to have been admitted if he was the incumbent of any of the constituent benefices immediately before the union⁶.

Where the patron is under a legal obligation to present some other person's nominee a nomination of the clergyman by that person to the patron precedes the presentation⁷. In other cases the patron selects the presentee.

1 Benefices (Exercise of Rights of Presentation) Measure 1931, s 1; Revised Canons Ecclesiastical, Canon C9 para 1: see PARA 818 ante. Subject to any provisions in the scheme for his designation or selection, this Measure applies to the presentation of the first incumbent of a new benefice created by a pastoral scheme as it applies on a vacancy in a benefice: Pastoral Measure 1968, s 32 (10), Sch. 3 para 5 (2). For the meaning of 'benefice', see PARA 768 note 1 ante. A notice given by the bishop to the person who is or will be (having regard to the scheme or order) entitled to exercise the right of presentation and to the parochial church councils concerned of the coming into force of the scheme or order is a notice for this purpose: Sch. 3 para 5 (2). As to the position where a team or group ministry is established, see PARA 870 post. The Measure of 1931 does not apply to guild churches: see PARA 601 ante.

2 See PARA 846 post. As to lapse, see PARA 826 et seq ante.

3 The benefice must be actually vacant: see PARA 836 text to note 2 post. As to the restriction on the right of presentation where a pastoral scheme provides for the creation of a new benefice by union, see the Pastoral Measure 1968, s 23 (1), and PARA 869 post.

4 See PARA 776 et seq ante.

5 Pastoral Measure 1968, s 23 (4), Sch. 3 para 4 (1).

6 Ibid Sch. 3 para 4 (2) (a).

7 Gib Cod 794; *Amhurst v Dawling* (1700) 2 Vern 401; *Mackensie v Robinson* (1747) 3 Atk 559; *R v Marquis of Stafford* (1790) 3 Term Rep 646 at 651.

UPDATE

835 Filling of benefice by presentation

NOTES--1968 Measure consolidated in Pastoral Measure 1983.

TEXT AND NOTE 1--1931 Measure s 1 replaced by the Patronage (Benefices) Measure 1986 s 7, which requires the bishop to notify the designated officer of the diocese, who must notify the registered patron and the secretary of the parochial church council. As to s 7, see PARA 818A.1.

1968 Measure s 32(10), Sch 3 para 5(2), as consolidated in 1983 Measure s 32(10), Sch 3 para 6(2) repealed: 1986 Measure Sch 5.

TEXT AND NOTE 2--As to the abrogation of the rules as to lapse, see *ibid* s 31 (see PARA 826-830).

NOTE 3--See now 1983 Measure s 24(1), which applies where a pastoral scheme provides for the creation of a new benefice, by union or otherwise; see PARA 869.

TEXT AND NOTE 5--Now a person so designated or selected need not be presented to the benefice, nor is the bishop required to nominate that person as the person to whom he collates the benefice; 1983 Measure s 24(4), Sch 3 para 5(1).

TEXT AND NOTE 6--Now where a pastoral scheme creates a new benefice, transfers a parish from one benefice to another, or establishes a team ministry for the area of a benefice, then if the first incumbent of that new benefice or the first rector of that ministry is so designated or selected, he is, unless the bishop otherwise directs, deemed to have been admitted to that new benefice or to the benefice for the area of which the team ministry is established, as the case may be, and no fees are payable; in any other case, 1983 Measure s 75(1) (see PARA 849) applies: Sch 3 para 5(2) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 20). Where a pastoral scheme or order provides for the holding in plurality of two or more benefices, then if the first incumbent who is to hold all the benefices concerned was immediately before the scheme or order comes into operation the incumbent of any of those benefices, he is, unless the bishop otherwise directs, deemed to have been admitted to the other benefice or benefices, and no fees are payable; in any other case, 1983 Measure s 75(2) (see PARA 849) applies: Sch 3 para 5(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/836. Mode of presenting.

836. Mode of presenting.

A presentation is made when it is exhibited to the bishop¹, and cannot be made until the church and benefice are actually void².

The presentation ought to be to the church of the benefice, and the document or announcement should show whether the benefice became void by death, cession, resignation or deprivation³. It may be made by word of mouth⁴ except where a corporation aggregate is patron, in which case it must be under the common seal⁵. It is usually in writing, in the nature of a letter missive to the bishop presenting to him a clergyman for admission to the vacant benefice⁶, and is not complete until it is sent or delivered to the bishop by the patron⁷.

An instrument purporting to be a grant by the Queen of a benefice in her patronage to a clergyman is a good presentation without any actual words of presentation⁸. She may present generally without specifying by what title, but if she recites a particular title and has no such title the presentation is void⁹. The presentation may be either under the Great Seal or under the privy seal¹⁰.

1 *Rud v Bishop of Lincoln* (1623) Hut 66. A presentation refused by the bishop and established by quare impedit can be afterwards again exhibited to the bishop, since the benefice, if full before, is made void by the judgment in the quare impedit; *Rud v Bishop of Lincoln* supra.

2 Watson, Clergyman's Law (4th Edn) 217, 218; *Harris v Austen* (1615) 1 Roll Rep 211 at 213; *Rud v Bishop of Lincoln* (1623) Hut 66; *Owen v Stainoe* (1682) Skin 45; *Alston v Atlay* (1837) 7 Ad & El 289 at 311, Ex Ch. For the position where the Sovereign is patron, see the Statute Law (Repeals) Act 1969, s 2 (2), (3), and PARA 822 ante.

3 Com Dig, Eglise (H 7). See PARA 922 et seq post.

4 Co Litt 120a; *Clerk v Prinn* (1669) 2 Keb 484; *A-G v Brereton* (1752) 2 Ves Sen 425 at 429. As to a presentation by the Queen, see *R v Emerson* (1612) 1 Brownl 162.

5 Bro Abr, Corporation (83). The choice of the presentee need not, however, be made under the common seal: *A-G v Davy* (1741) 2 Atk 212.

6 Co Litt 120a; Watson, Clergyman's Law (4th Edn) 149, 150. For a form of presentation, see Forms and Precedents. The precise form is not material, but it should be made to the bishop 'or in his absence his vicar-general in spirituals or any other person having sufficient authority in this behalf'; for in that case it will remain good even though the bishop himself, by death or otherwise, becomes incapable of acting upon it: Watson, Clergyman's Law (4th Edn) 150. A presentation to the benefice instead of to the church is good: *R v ----* (1611) Cro Jac 247. As to where the improper rector of a church, being the patron, presents to the rectory or parsonage instead of to the vicarage, see PARA 770 note 5 ante; as to where two or more persons have the right to present jointly, see PARA 779 ante.

7 *Grendit v Baker* (1602) Yelv 7, where it was said that if the writing was taken to the bishop without the patron's knowledge or licence it would be no presentation. A presentation by a wrong name, or reciting a wrong title in the patron, is void: *Ayray's Case* (1614) 11 Co Rep 18b; Watson, Clergyman's Law (4th Edn) 220, 221.

8 2 Roll Abr 353.

9 *R v Thorneborough and Studly* (1678) 1 Mod Rep 253; Watson, Clergyman's Law (4th Edn) 220, 221.

10 *R v ----* (1611) Cro Jac 247. A presentation under the Great Seal to a benefice of which the advowson belongs to the Duchy of Lancaster is good: *Anon* (1591) 1 Leon 227; *R v Bishop of Lincoln and King* (1613) Moore KB 874. As to presentation in right of a ward, see *Stephens v Potter* (1627) Cro Car 99.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/837. When presentation is complete.

837. When presentation is complete.

A presentation by a spiritual patron is complete when it is received by the bishop, and cannot afterwards be varied or revoked¹ although, if his presentee is on good grounds refused by the bishop, he can make a fresh presentation². A presentation by a lay patron other than the Sovereign, however, is not complete until the institution or admission of the presentee, and before this takes place he may either (1) vary his presentation by presenting one or more additional clergymen, in which case the bishop may elect which of them he will institute or admit; or (2) revoke his presentation and present another clergyman, in which case the bishop must institute or admit the later presentee. If his presentee is refused by the bishop he can make a fresh presentation within the permitted time³. A presentation by the Sovereign is not complete until induction; until then she may, even after institution or admission, make a fresh presentation⁴, and her later presentation, even if it does not expressly revoke the former, has the effect of revoking it so that the bishop cannot elect to act upon it⁵.

1 Gib Cod 795; Watson, Clergyman's Law (4th Edn) 226.

2 Benefices Act 1898, s 6 (2).

3 Gib Cod 795; Watson, Clergyman's Law (4th Edn) 225, 226. A lay patron can vary cumulado and can also revoke a presentation: *Stoke v Sykes* (1627) Lat 191 at 253; *Evans v Ascough* (1627) Lat 233 at 248; *Rogers v Holled* (1775) 2 Wm Bl 1039. If the clergyman first presented is refused by the bishop and the patron thereupon presents another, the bishop cannot withdraw his refusal and admit the first: *Bishop of Hereford's Case* (1584) Cro Eliz 27.

4 Gib Cod 795; Watson, Clergyman's Law (4th Edn) 223.

5 Co Litt 344b; Gib Cod 795; Watson, Clergyman's Law (4th Edn) 223-225; *R v ----* (1611) Cro Jac 247 at 248; *Kitchin v Calvert* (1611) Lane 100 at 102; *Hutchins v Glover* (1618) Cro Jac 463.

UPDATE

837 When presentation is complete

TEXT AND NOTE 1--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/838. Death of patron or presentee.

838. Death of patron or presentee.

The death of the Queen's presentee before he is inducted or of another patron's presentee before he is instituted or admitted revokes the presentation¹. If the Queen dies before her presentee is inducted her successor can revoke the presentation; if another patron dies before his presentee is instituted or admitted, however, the presentation is not revocable, and if his personal representatives make another presentation the bishop may elect between the two presentees².

¹ *Holt's Case* (1611) 9 Co Rep 131b at 132a; *Brockham's Case* (1628) Litt 128 at 135; *A-G v Wyeliffe* (1748) 1 Ves Sen 80 at 81, per Lord Hardwicke LC.

² *Smalwood v Bishop of Coventry etc and Marsh* (1590) 1 Leon 205; *Kitchin v Calvert* (1611) Lane 100 at 102; Watson, *Clergyman's Law* (4th Edn) Edn) 225.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/839. Who may be presented.

839. Who may be presented.

The presentee must be a fit person¹, namely a person (1) of the canonical age, and in priest's orders by episcopal ordination or who can obtain such ordination before he is instituted or admitted²; (2) of sufficient learning³; and (3) against whose orthodoxy and morals no charge can be established⁴.

The bishop is at liberty to refuse a presentee if at the date of the presentation not more than three years have elapsed since he was ordained deacon⁵. The bishop may also in his discretion refuse a presentee who has not previously held a benefice or the office of vicar in a team ministry on the ground that he has had no, or less than three years' experience as a full-time parochial minister⁶. Such a refusal and the reason for it must be signified by the bishop to the person presenting to the benefice and to the presentee, either of whom may within a month after the signification appeal in writing to the archbishop of the relevant province, who may either uphold the bishop's decision or direct him to institute or admit the presentee⁷.

As regards sufficiency of learning, the bishop is the judge⁸, but if after examination and inquiry he decides that the presentee is deficient in this respect, he must give notice to the patron of his decision and of the particulars of the deficiency, the adequacy of which is subject to judicial review⁹. As regards orthodoxy, it is not enough that the bishop should notify that he finds the presentee schismatic or unfit, but he must specify particulars, and his decision is liable to be judicially overruled¹⁰. As regards moral life, the presentee must produce a sufficient testimony of his former good life and behaviour, if the bishop requires it¹¹. It is not sufficient for the bishop to refuse him on the general ground that he is criminous¹². The notice of refusal must specify the particulars of his moral unfitness¹², but any cause which would be sufficient to deprive an incumbent is a sufficient ground for refusing a presentee¹³.

The presentee may be refused on the ground that he is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct, or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination or having, with reference to the presentation, been knowingly party or privy to any invalid¹⁴ transaction or agreement¹⁵. He may also be refused if, at the date of the vacancy, not more than one year has elapsed since a transfer¹⁶ of the right of patronage of the benefice unless it is proved that the transfer was not effected in view of the probability of a vacancy occurring within the year¹⁷.

The bishop is allowed twenty-eight days for inquiring and informing himself of the sufficiency and qualifications of a presentee¹⁸.

When a presentee has been refused he cannot be presented again by the patron in respect of the same vacancy¹⁹.

1 *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 39, 51; *Walsh v Bishop of Lincoln* (1875) LR 10 CP 518.

2 Act of Uniformity 1662, s 10; Statute Law (Repeals) Act 1969, s 1, Schedule, Part II; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon C10 para 1; Gib Cod 805. As to clergymen ordained by bishops of the Episcopal Church in Scotland, see the Episcopal Church (Scotland) Act 1864, s 5, and PARA 670 ante; and as to clergymen ordained by bishops of dioceses outside the United Kingdom, see the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 1, and PARA 669 ante. A presentee applying for institution to a bishop who has not ordained him must produce his letters of orders or other sufficient evidence that he has been ordained (as to which see PARA 662 ante); Revised Canons

Ecclesiastical, Canon C10 para 2. See *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 54, a decision on the Canons Ecclesiastical (1603) 39 (revoked).

3 Revised Canons Ecclesiastical, Canon C10 para 2.

4 In *Heywood v Bishop of Manchester* (1884) 12 QBD 404 at 418, Pollock B said that this enumeration cannot be treated as containing an exhaustive category of ecclesiastical impediments which would justify refusal of a presentee. An alien may be presented if he is acquainted with English (*Commendam Case, Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140 at 148, Ex Ch; Watson, *Clergyman's Law* (4th Edn) 214, 215); and an illegitimate person may be presented, even though he has been ordained without a dispensation (*Kensit v Dean and Chapter of St Paul's* [1905] 2 KB 249 at 257, DC: see PARA 658 ante). As to the grounds on which a priest or deacon is liable to deprivation and disqualification from holding any preferment, see PARAS 1373, 1374 post. The fact that a presentee holds another benefice is not necessarily a ground for refusal: Watson, *Clergyman's Law* (4th Edn) 216. As to vacation by cession, see PARA 930 post.

5 Benefices Act 1898, s 2 (1) (b); Revised Canons Ecclesiastical, Canon C10 para 3b.

6 Benefices Measure 1972, s 1 (1); Revised Canons Ecclesiastical, Canon C10 para 3c. Experience includes that gained in any benefice, team ministry or parish in the provinces of Canterbury and York and any benefice (or corresponding office) or parish in the Church in Wales, the Church of Ireland or the Episcopal Church of Scotland: Benefices Measure 1972, s 2 (3); Revised Canons Ecclesiastical, Canon C10 para 3c.

7 Benefices Measure 1972, s 1 (2); Revised Canons Ecclesiastical, Canon C10 para 3c. Where the bishop of a diocese is an archbishop, appeal lies to the archbishop of the other province: Benefices Measure 1972, s 1 (2) proviso. The Act applies to benefices in the patronage of the Crown or the Duchy of Cornwall: s 2 (2).

8 Cf. Revised Canons Ecclesiastical, Canon C10 para 2.

9 Co Inst 631, 632; *Hele v Bishop of Exeter* (1693) 3 Lev 313; *R v Archbishop of Canterbury and Bishop of London* (1812) 15 East 117 at 143, 144, per Lord Ellenborough CJ; *Willis v Bishop of Oxford* (1877) 2 PD 192.

10 *Specot's Case* (1590) 5 Co Rep 57a; *Gorham v Bishop of Exeter* (1849) Moore's Special Report 1, PC. A bishop may refuse a presentee who has been guilty of ritual offences which, if he were beneficed, would be dealt with, in the first instance, not by deprivation, but by monition: *Heywood v Bishop of Manchester* (1884) 12 QBD 404 at 421; *Gore-Booth v Bishop of Manchester* [1920] 2 KB 412; affd. 89 LJKB 1128, CA.

11 Revised Canons Ecclesiastical, Canon C10 para 2. This sufficient testimony has, by long-established custom, consisted of a testimonial by three beneficed clergymen, countersigned, if they are not beneficed in the diocese of the bishop to whom the testimonial is produced, by the bishop of the diocese in which their respective benefices are situate, (1) that the presentee has been personally known to them for the three years last past, (2) that they have had opportunities of observing his conduct, (3) that during the whole of that time they verily believe that he lived piously, soberly and honestly, and that they have not heard anything to the contrary, nor that he has at any time held, written or taught anything contrary to the doctrine or discipline of the Church, and (4) that they believe him to be, as to his moral conduct, a person worthy to be admitted to the benefice: *Bishop of Exeter v Marshall* (1868) LR 3 HL 17 at 48.

12 *Specot's Case* (1590) 5 Co Rep 57a.

13 *Specot's Case* (1590) 5 Co Rep 57a; Watson, *Clergyman's Law* (4th Edn) 215; *Bell v Bishop of Norwich* (1565) 3 Dyer 254b. There is no fixed limit of time beyond which the bishop cannot inquire into the presentee's past life: *Marriner v Bishop of Bath and Wells* (1876) [1893] P 145.

14 Ie invalid under the Benefices Act 1898.

15 Ibid s 2 (1) (b); Revised Canons Ecclesiastical, Canon C10 para 3b. As to invalid agreements, see PARA 802 ante.

16 For the meaning of 'transfer', see the Benefices Act 1898, s 1 (6), and PARA 802 note 3 ante.

17 Ibid s 2 (1) (a); Revised Canons Ecclesiastical, Canon C10 para 3a.

18 Ibid Canon C9 para 2.

19 Benefices Act 1898, s 6 (1).

UPDATE

839 Who may be presented

TEXT AND NOTE 2--There is now an age limit of 70: Ecclesiastical Offices (Age Limit) Measure 1975 s 1, see further PARA 664.

NOTE 7--The procedure and practice on or in connection with proceedings on an appeal under the 1972 Measure s 1(2) must be in accordance with rules made under the Benefices Act 1898 s 11: 1972 Measure s 1(2A); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 11.

TEXT AND NOTES 16, 17--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

TEXT AND NOTE 19--Repealed: *ibid* Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/840. Notice of refusal to present.

840. Notice of refusal to present.

Where the ground of refusal to institute or admit a presentee is one of certain specified grounds¹, or any other sufficient ground of unfitness or disqualification except a ground of doctrine or ritual, the bishop must signify his refusal by a notice stating the grounds of refusal sent to the person presenting and to the presentee by registered letter².

1 See PARA 839, text to notes 15-17 ante.

2 Benefices Rules 1926, S.R. & O. 1926 No. 357, r 16. For the form of notice, see Schedule, Forms 10, 11, and Court Forms. As to the remedies of patron and presentee in case of unjustifiable refusal, see PARA 820, see also the Benefices Measure 1972, s 1 (2); and PARA 839 ante.

UPDATE

840 Notice of refusal to present

TEXT AND NOTES--1926 Rules revoked: Patronage (Benefices) Rules 1987, SI 1987/773, r 16. See the Patronage (Benefices) Measure 1986 s 13 (see PARA 818A.7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(ii) Presentation to Benefice/841. Refusal when presentor has no title or church is litigious.

841. Refusal when presentor has no title or church is litigious.

The bishop has the right, and ought, to refuse, or perhaps suspend, the admission of a presentee where the person presenting appears to have no title¹, or when the church is litigious². If the bishop admits a clergyman on one of the presentations to a litigious church, or admits a clergyman on presentation when a caveat against his so doing has been entered by another person, he will be liable as a disturber in the event of the title of the presentor being disproved. In either case he ought to pause until the conflicting claimants or their clergymen either take legal proceedings to pray him to award a jus patronatus³ to inquire into and determine the right of patronage⁴. If, however, the bishop institutes upon a void presentation the presentee thereby acquires the benefice, by the bishop's collation, against all persons except the lawful patron⁵.

1 *Ayray's Case* (1614) 11 Co Rep 18b; Watson, *Clergyman's Law* (4th Edn) 217.

2 See PARA 822 text to note 4 ante. As to when a church is litigious, see PARA 822 note 3 ante.

3 As to jus patronatus, see PARA 824 ante.

4 *Elvis v Archbishop of York, Taylor and Bishop* (1619) Hob 315 at 317; Degge, *Parson's Counsellor*, Part 1, c. 3, pp. 11-14; Watson, *Clergyman's Law* (4th Edn) 113, 227-230; Clerke, *Praxis in Curiis Ecclesiasticis* xcvi-c.

5 Watson, *Clergyman's Law* (4th Edn) 221.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/842. Admission.

(iii) Admission to Benefice

842. Admission.

The bishop admits a clergyman to a benefice in respect of the cure of souls (which is its spiritual part) either by institution after presentation, or by collation where the bishop is the patron or acquires the right of appointment by lapse¹. In the case of a perpetual curacy admission was by licence, whether a presentation had been made to the benefice or the bishop was himself the patron².

¹ Strictly speaking, admission is merely the bishop's declaration that he approves a presentee as a fit person to serve the cure of the church or benefice: Co Litt 344a; Watson, Clergyman's Law (4th Edn) 154. The word is more commonly used to signify generally the actual committal of the cure to the clerk, however, and was used particularly for the committal of the cure in the case of a perpetual curacy by licence (see the text and note 2 *infra*) as distinguishable from institution or collation. As to the simoniacal admission of a clerk to a benefice, see PARAS 832-834 *ante*. As to refusal to admit, see PARAS 821, 822 *ante*. The term 'collation' is used in two different senses in relation to the bishop's right of patronage. He may be said to collate the benefice to the priest (as in the Revised Canons Ecclesiastical, Canon C10, par. 5), or to collate the priest to the benefice (as in the Benefices Act 1898, s 2 (2)). The former appears to be the earlier, although perhaps now the less common, usage: see Oxford English Dictionary, 'collate' and 'collation'

² A perpetual curacy is now a vicarage: see the Pastoral Measure 1968, s 87, and PARA 771 *ante*.

UPDATE

842 Admission

NOTE 1--1898 Act s 2(2) repealed: Patronage (Benefices) Measure 1986 Sch 5.

NOTE 2--Not reproduced in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/843. Notice of intention to admit.

843. Notice of intention to admit.

The bishop must not collate, institute or admit any person to a benefice until the expiration of one month after notice of his intention has been served on the churchwardens of the parish, who must publish it¹. The notice must be sent to the churchwardens by registered letter addressed to them as such². Immediately they receive it they must fix it on the principal door or notice board of the church or chapel of the benefice or, if there is more than one, of such one of the churches or chapels as the bishop determines, where it is left fixed for one calendar month, and take such other steps as they think expedient for giving publicity to the notice³. At the end of the month they must return it to the bishop with a certificate that they have complied with the directions as to fixing it³.

1 Benefices Act 1898, s 2 (2); Revised Canons Ecclesiastical, Canon C10 para 4. This provision and those of the Benefices (Exercise of Rights of Presentation) Measure 1931 (see PARA 818 ante) do not apply to the admission of a person designated by or selected under a pastoral scheme or order as the incumbent of any benefice: Pastoral Measure 1968, s 23 (4), Sch. 3 para 4 (3).

2 Benefices Rules 1926, S.R. & O. 1926 No. 357, r 14. For the form of notice, see Schedule, Form 9.

3 Ibid r 15.

UPDATE

843 Notice of intention to admit

TEXT AND NOTES--Replaced by the Patronage (Benefices) Measure 1986 s 19; Patronage (Benefices) Rules 1987, SI 1987/773, rr 12, 13 (see PARA 818A.10).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/844. Declarations and oaths.

844. Declarations and oaths.

Before a person is collated, instituted or admitted to a benefice by the bishop, he must subscribe in the presence of the bishop, or of the bishop's commissary, a declaration of assent and a declaration against simony, and take the oaths of allegiance and of canonical obedience¹.

¹ Clerical Subscription Act 1865, ss 2, 5; Benefices Act 1898, s 1 (4), Schedule; Benefices Act 1898 (Amendment) Measure 1923, s 5; Church of England (Worship and Doctrine) Measure 1974, ss 2 (1), 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon C13 para 1, Canon 14 para 3, Canon 15 para 1 (5) (substituted by Amending Canon No. 4), Canon 16 para 2. For the oath of allegiance, see the Promissory Oaths Act 1868, ss 2, 8. As to the oath of canonical obedience, see Clerke, *Praxis in Curiis Ecclesiasticis* xci; Gib Cod 810. See further PARA 660 ante. In the case of any overseas clergyman who is not a citizen of the United Kingdom and colonies the oath of allegiance may be dispensed with: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, s 2.

UPDATE

844 Declarations and oaths

TEXT AND NOTE 1--The declaration against simony is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1, Schedule; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/845. Institution.

845. Institution.

Admission of a presentee to the cure of souls and spiritualities of a rectory or vicarage is by institution by the bishop or, if he is for some grave and urgent cause unable to give institution himself, by his commissary¹. This act, which admits the clergyman to his office, may be performed either within or outside the diocese, and the particular seal used for the instrument of institution is immaterial². The institution and the induction³ normally take place at the same time at a service in the church of the benefice⁴. After the institution and induction the bishop presents the new incumbent to the congregation, on whose behalf the churchwardens welcome him. It is customary for the incumbent to be led to the font, prayer desk, lectern, pulpit and sanctuary where he is reminded of his duties in the conduct of public worship and the ministry of the Word and sacraments.

1 Revised Canons Ecclesiastical, Canon C10 paras 5-7. The clergyman kneels before the bishop while he reads the words of institution from a written instrument, drawn beforehand for the purpose, with the episcopal seal appendant, which the presentee holds in both hands: see 1 Burn's Ecclesiastical Law (4th Edn) 168; Revised Canons Ecclesiastical Canon C10 para 6. The bishop then delivers the instrument of institution to the presentee. The institution of a person not in holy orders is a nullity: *R v Ellis* (1888) 16 Cox CC 469.

2 *Cort v Bishop of St David's* (1634) Cro Car 341 at 342.

3 See PARA 849 post.

4 See Revised Canons Ecclesiastical, Canon C10 para 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/846. Collation.

846. Collation.

Where the bishop is himself patron of the rectory or vicarage, he institutes without a previous presentation, but although the act is in the same form (as where the person instituted has been presented by any other patron) it is commonly called collation¹.

¹ Gib Cod 813; 1 Burn's Ecclesiastical Law (4th Edn) 164. It is also collation if the bishop institutes upon a void presentation: Watson, Clergyman's Law (4th Edn) 221. For the exemption from collation of a person designated by or selected under a pastoral scheme or order as the incumbent of any benefice, see the Pastoral Measure 1968, s 23 (4), Sch. 3 para 4 (1), (2), and PARA 835 ante; see also PARA 843 ante. As to the use of the term 'collatin', see PARA 842 note 1 ante.

UPDATE

846 Collation

NOTE 1--1968 Measure, as amended, consolidated in Pastoral Measure 1983; see s 24(4), Sch 3 para 5(1), which provides that such a person is not required to be presented to the benefice, nor is the bishop required to nominate that person as the person to whom he collates the benefice. See also *ibid* Sch 3 para 5(2), (3) PARA 835.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/847. Effect of institution or collation.

847. Effect of institution or collation.

By institution or collation the cure of souls of the benefice is committed to the clergyman. He is admitted to his office to pray and preach, and he is then bound to discharge his duties as incumbent and is liable for any neglect of them. He may also enter into the glebe and receive the profits of the benefice, but until induction he has no title to sue for or deal with them. After presentation and institution the church is regarded in law as full, except as against the Queen, against whom it is not full until after induction, and except also in the case of an exchange, which is not complete until induction¹. Collation, if not rightful, however, does not render the church full, and is only a temporary provision for celebration of divine service until the lawful patron presents².

1 As to exchange, see PARA 927 et seq post. Pending a dispute as to the patronage of the benefice the institution of the presentee of one of the claimants can be restrained by injunction: *Nicholson v Knapp* (1838) 9 Sim 326; *Greenslade v Dare* (1853) 17 Beav 502.

2 Gib Cod 813; *Hare v Bickley* (1577) 2 Plowd 526 at 528; *Green's Case* (1602) 6 Co Rep 29a at 29b; *Hutchins v Glover* (1618) Cro Jac 463; 1 Burns's Ecclesiastical Law (4th Edn) 164, 167, 179, 171.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iii) Admission to Benefice/848. Admission by licence.

848. Admission by licence.

In the case of a perpetual curacy¹ admission by the bishop's licence put the clergyman in complete possession of both the spiritualities and temporalities of the benefice, without institution or induction². Where the perpetual curacy was a titular vicarage³, however, a clergyman was sometimes in practice instituted or collated and inducted to it instead of being licensed.

1 As to the transformation of perpetual curacies into vicarages, see the Pastoral Measure 1968, s 87, and PARA 771 ante.

2 Gib Cod 819, 820; *Bowell v Milbank* (1772) 1 Term Rep 399n at 401n, per Lord Mansfield CJ.

3 Ie under the Incumbents Act 1868, s 2: see PARA 770 ante.

UPDATE

848 Admission by licence

NOTE 1--Not reproduced in Pastoral Measure 1983.

NOTE 3--Repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iv) Induction/849. Induction.

(iv) Induction

849. Induction.

The induction of an instituted or collated clergyman into the church and into the temporalities of the benefice is performed by the archdeacon¹, to whom the bishop issues a mandate for the purpose, or by some person to whom the archdeacon by precept delegates the duty². The person who inducts takes the clergyman by the hand and lays it upon the key or ring of the church door while he pronounces the words of induction, after which the inducted clergyman tolls a bell to make the induction public³. The mandate is then returned to the bishop with a certificate of the induction indorsed upon it⁴. Induction normally takes place at the same time as institution⁵.

Where an appointment is made to a benefice in the area of which there are two or more parish churches the bishop may direct in which parish church the incumbent is to be inducted, and after induction in that church the incumbent is deemed to have been inducted in both or all of the parish churches situated in the area of the benefice and to have been admitted to the benefice⁶.

It is not necessary, by reason only of the substitution of another church for a parish church by a pastoral scheme or order⁷, for the incumbent of the benefice to be inducted in the new parish church or to comply with any other process or form of law⁸.

1 By prescription or composition others may have the right to induct instead of the archdeacon: Gib Cod 815; 1 Burn's Ecclesiastical Law (4th Edn) 172. As to the simoniacal induction of a clergyman to a benefice, see PARA 833 ante.

2 See the Revised Canons Ecclesiastical, Canon C11 para 1. If the archdeacon is unable to make the induction himself he must issue a general mandate for the induction to all and singular ministers beneficed or licensed within the archdeaconry by virtue of which any such minister may make the induction on his behalf: Canon C11 para 3. If such a mandate is issued induction made by a clergyman not resident within the archdeaconry will be good: *Dean's Case* (1609) Noy 134. A mandate for induction is not revoked by the accession of a new bishop before it is executed: *Robinson v Wolley* (1678) T Jo 78, Ex Ch.

3 Revised Canons Ecclesiastical, Canon C11 para 2. No particular form of induction is required. If necessary the hand may be laid on the church or churchyard wall: Canon C11 para 2. Induction may also be made by delivery of a clod or turf and twing of the glebe: Gib Cod 815; Degge, Parson's Counsellor, Part I, c. 2, pp. 7, 8; 1 Johnson's Clergyman's Vade Mecum 84.

4 Gib Cod 815.

5 See PARA 845 ante.

6 Pastoral Measure 1968, s 75 (1).

7 As to pastoral schemes and orders, see PARA 856 et seq post.

8 Pastoral Measure 1968, s 23 (4), Sch. 3, 4 (4).

UPDATE

849 Induction

TEXT AND NOTES 2, 4--References to 'mandate' are now references to 'directions for induction': Church of England (Miscellaneous Provisions) Measure 1976 s 1; Amending Canon No 5.

TEXT AND NOTE 6--Now Pastoral Measure 1983; see s 75(1). Where any person is appointed an incumbent of benefices which are to be held in plurality, the bishop may direct that the incumbent is to be inducted in such one of the parish churches in the areas of those benefices as he may specify, and after such induction the incumbent is deemed to have been inducted in all of the parish churches in those areas and to have been admitted to each of those benefices: *ibid* s 75(2).

NOTE 8--Now *ibid* s 24(4), Sch 3 para 5(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iv) Induction/850. Effect of induction.

850. Effect of induction.

By induction the instituted or collated clergyman is put into complete possession of the church and benefice with all the profits and emoluments and, if the benefice is a rectory, becomes *persona impersonata* or *parson imparsonnee*¹.

¹ *Hare v Bickley* (1577) 2 Plowd 526 at 528; Ayl Par 302; 1 Burn's Ecclesiastical Law (4th Edn) 176. See also Revised Canons Ecclesiastical, Canon C11 para 1. By the act of induction the incumbent is put into the actual possession of a part for the whole, and it is not necessary that he should actually go upon the glebe itself: *Bulwer v Bulwer* (1819) 2 B & Ald 470. An injunction will be granted to restrain the induction of an incumbent who has been improperly presented (*Potter v Chapman* (1750) Amb 98), and obstruction to the induction of a lawful incumbent will be restrained by injunction (*Ex Parte Jenkins* (1868) 5 Moo PCCNS 351). Induction will be presumed after possession of the benefice for several years: *Chapman v Beard* (1797) 3 Anst 942.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(3) FILLING OF BENEFICES/(iv) Induction/851. Public declaration of assent.

851. Public declaration of assent.

It was formerly necessary for a clergyman, having been instituted or collated to a benefice, publicly to read the Thirty-Nine Articles and make the declaration of assent on the first Sunday on which he officiated¹, but this is no longer required².

1 See the Clerical Subscription Act 1865, ss 1, 7 (repealed). Failure to do so involved absolute forfeiture of the benefice or perpetual curacy: s 7 (repealed); see *Green's Case* (1602) 6 Co Rep 29a. This applied also to incumbents of new benefices created under a pastoral scheme or order: see the Pastoral Measure 1968, s 75 (2) (repealed), Sch. 3 para 4 (2). See also *Brown v Spence* (1663) 1 Keb 590; *Powel v Milbank* (1772) 3 Wils 355; *Chapman v Beard* (1797) 3 Anst 942.

2 See the Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2. However, every minister licensed to a stipendiary curacy must, on the first Sunday on which he officiates in the church or one of the churches in which he is licensed to serve or, in the case of a guild church, in that church on such weekday as the bishop may approve, publicly and openly make the declaration of assent (see the Revised Canons Ecclesiastical, Canon C15 para 1 (substituted by Amending Canon No. 4)) at the time of divine service in the presence of the congregation: Canon C15 para 4 (substituted by Amending Canon No. 4)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(4) PLURALITIES/852. Pluralities before 1st April 1969.

(4) PLURALITIES

852. Pluralities before 1st April 1969.

The position before the date of the coming into force of the Pastoral Measure 1968¹ was that, except insofar as was specifically permitted by law, no incumbent could hold more than one benefice at a time². The exceptions permitted³ were pluralities allowed by licence or dispensation from the Archbishop of Canterbury⁴ or those authorised by a bishop's order⁵.

1 le on 1st April 1969: see the Pastoral Measure 1968, s 96 (3); London Gazette, 7th February 1969.

2 See the Pluralities Act 1838, s 2 (repealed).

3 In addition to those here specified deans and other clergy holding cathedral preferments were in certain circumstances permitted to hold benefices as well as those preferments (cf. *ibid* s 2 (repealed)), and suffragan bishops might also (and often did) hold benefices (see the Suffragan Bishops Act 1534, s 7, which appears to have been saved by the Pluralities Act 1838, s 132, and is saved by the Statute Law (Repeals) Act 1969, s 4 (2)).

4 Thus a clergyman holding such a licence or dispensation might hold together any two benefices the churches of which were within four miles of one another by the nearest road or footpath or by an accustomed ferry, and the annual value of one of which did not exceed £400: Pluralities Measure 1930, s 1 (repealed); Pluralities Act 1838, s 129. A condition in a bequest that a benefice should not be held in plurality is not broken by its union with another benefice: *Re Macnamara, Hewitt v Jeans* (1911) 104 LT 771. Two churches in different civil parishes may constitute one benefice: *Carpenter v Laundon Overseers* (1922) 127 LT 555, DC. For deductions which might be made in computing the value, see the Pluralities Act 1850, s 4 (repealed). For the procedure on application for the licence or dispensation, see the Pluralities Act 1850, s 4 (repealed). For the procedure on application for the licence or dispensation, see the Pluralities Act 1838, ss 6, 7, 9 (repealed).

Alternatively the bishop might forward to the Church Commissioners a recommendation of the diocesan pastoral committee that two or more benefices might be held in plurality, and the Church Commissioners thereupon had to request the bishop to issue a commission under which commissioners could recommend that the benefices be so held; if the bishop, the Church Commissioners, any other bishop affected and the patrons concerned approved, the recommendation was transmitted to the Archbishop of Canterbury who might grant a licence to the clergyman concerned: Pluralities Measure 1930, s 2; Pastoral Reorganisation Measure 1949, s 1 (both repealed). There was no limitation on the number of benefices to be held or to be served in one day, on their distance apart or in their annual value: Pluralities Measure 1930, s 2 (3) (repealed).

5 Thus the bishop and the diocesan pastoral committee might forward to the Church Commissioners provisional proposals that two or more dioceses should be held in plurality, and the committee; after considering any representations made by interested parties the commissioners might approve the draft order which might then be made by the bishop, authorising the incumbent to hold the benefices concerned subject to conditions, with directions as to the selection of the first incumbent and the future exercise of the right of patronage: Pastoral Reorganisation Measure 1949, ss 3, 5 (repealed). There was no limitation on the number of benefices to be held or to be served in one day, on their distance apart or on their annual value: s 5 (8) (repealed).

The bishop's order remained valid until the next vacation of the benefices or until revoked by him: see s 5 (1), (9), (11) (repealed). He might by subsequent order vary the original order, but if this would adversely affect the existing incumbent's rights his consent was required: s 5 (11) (repealed). The bishop might direct what services might be omitted in the churches concerned (s. 6; Marriage Act 1949, s 76, Sch. 5, Part II (both repealed)), and might direct where banns were to be published and marriages solemnised, but no person might be deprived of the right to be married in any particular church and a person might be married in one church even if the banns had been called, by the bishop's directions, in another church (s. 23).

UPDATE

852 Pluralities before 1st April 1969

NOTE 3--1534 Act s 7 repealed: Statute Law (Repeals) Act 1977.

NOTE 4--1838 Act s 129 repealed: Church of England (Miscellaneous Provisions)
Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(4) PLURALITIES/853. Pluralities under the Pastoral Measure 1968.

853. Pluralities under the Pastoral Measure 1968.

No person may now hold benefices¹ in plurality except in pursuance of a pastoral scheme or order² or under provisions in force before 1st April 1969³. No person may hold a cathedral preferment with a benefice or two or more benefices authorised to be held in plurality by a pastoral scheme or order unless the cathedral statutes so provide or allow⁴, and a cathedral preferment may not be held in more than one cathedral⁵.

A pastoral scheme or order may provide for the holding in plurality of any two or more benefices subject to such conditions, if any, as may be specified⁶. Except with the leave of the bishop⁷ the incumbent of two or more benefices held in plurality may not resign any of those benefices without resigning the other or others and, if the bishop grants leave and there are at least two other benefices, the resignation does not affect the holding in plurality of those other benefices⁸.

The provisions of a pastoral scheme for the holding of benefices in plurality continue in force, unless the scheme otherwise provides, during a vacancy⁹. They may, however, be terminated, when the bishop gives notice of a vacancy or impending vacancy¹⁰, in one of two ways: (1) by the bishop, who may state in the notice that the provisions are to be terminated and must then serve the notice on the patrons¹¹ of the benefices concerned and those who will become patrons on the termination of the plurality provisions¹²; or (2) by any interested parochial church council which may, within twenty-eight days after the service of the notice, pass a resolution that the provisions are to be terminated and must then notify the resolution to the bishop, who notifies the other interested parochial church councils, together with the patrons and those who will become patrons on the termination of the plurality provisions; the bishop must then serve a fresh notice on all the councils and patrons concerned, which has effect in substitution for the previous notice¹³. In either case those provisions then cease to have effect on the vacancy or the service of the notice, whichever is the later¹⁴. The termination of these provisions is without prejudice to any provisions relating to the future exercise of the rights of patronage of the benefices concerned in the event of a renewal of the plurality¹⁵.

1 In the Pastoral Measure 1968, s 88, 'benefice' includes the office of vicar in a team ministry: s 88 (7). See also PARA 768 note 1 ante.

2 Ibid s 88 (1). If any person accepts any benefice or cathedral preferment and that acceptance would (but for s 88 (4)) result in his holding offices in contravention of s 88, he is deemed, on his admission to the benefice or preferment, to vacate the offices previously held by him: s 88 (4). As to pastoral schemes and orders, see PARA 856 et seq post.

3 Ibid s 88 (5). If a person who before that date held any office under the former law (as to which see PARA 852 ante) accepts and is admitted to a new office s 88 (5) ceases to apply to him, and if he then holds offices in contravention of s 88 he will be deemed to vacate the offices held before that admission: s 88 (5) proviso. For the meaning of 'cathedral preferment' and 'office', see s 88 (7), and PARA 641 notes 2, 6 ante.

4 Ibid s 88 (2). For the meaning of 'cathedral statutes', see PARA 641 note 5 ante.

5 Ibid s 88 (3).

6 Ibid ss 17 (1), 38 (c). The power under s 38 (c) does not include power to require the benefice to be vacated under s 24 (2): s 38 proviso.

7 For the meaning of 'bishop', see PARA 813 note 3 ante.

8 Pastoral Measure 1968, s 17 (4).

- 9 Ibid s 17 (2).
- 10 le under the Benefices (Exercise of Rights of Presentation) Measure 1931, s 1: see PARA 818 ante.
- 11 For the meaning of 'patron', see PARA 813 note 5 ante.
- 12 Pastoral Measure 1968, s 17 (2) proviso (a).
- 13 Ibid s 17 (2) Proviso (b).
- 14 Ibid s 17 (2) provisos (a), (b).
- 15 Ibid s 17 (3).

UPDATE

853 Pluralities under the Pastoral Measure 1968

TEXT AND NOTES--1968 Measure consolidated in Pastoral Measure 1983; see infra.

NOTES 1-5--Now ibid s 85.

NOTES 6-15--Now ibid s 18.

TEXT AND NOTE 8--But the Church Commissioners may by instrument make such consequential amendments of the pastoral scheme which provided for the holding of the benefices in plurality as they think necessary: ibid s 18(4).

NOTE 10--Now under the Patronage (Benefices) Measure 1986 s 7.

TEXT AND NOTE 12--Notice must also be served on the Church Commissioners: 1983 Measure s 18(2) proviso (a); 1986 Measure Sch 4 para 17.

TEXT AND NOTE 13--The bishop must also notify the Church Commissioners: 1983 Measure s 18(2), proviso (b); 1986 Measure Sch 4 para 17.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(4) PLURALITIES/854. Proposals for holding benefices in plurality.

854. Proposals for holding benefices in plurality.

If after consultation with the pastoral committee the bishop¹ considers that proposals, which could be implemented by a pastoral order, for holding two or more benefices² in plurality should be submitted to the Church Commissioners, and the interested parties have consented to the proposals, he may submit them of his own motion, with the consents, to the commissioners³. A draft order giving effect to the proposals is then prepared by the commissioners⁴ and is duly sealed and made⁵.

The proposals made by the bishop may provide for including among the benefices to be held in plurality one or more benefices from a diocese other than his own diocese, but the consent of the bishop of the other diocese, who must consult the pastoral committee of his diocese, must be obtained before the consents of the interested parties in that other diocese are sought⁶. Further, the proposals may include proposals for any matters arising in connection with the holding of benefices in plurality for which provision may be made by a pastoral order⁷.

1 For the meaning of 'bishop', see PARA 813 note 3 ante.

2 For the meaning of 'benefice', see PARA 768 note 1 ante.

3 Pastoral Measure 1968, s 13 (1) (a).

4 Ibid s 13 (1) (b). The draft must incorporate any amendments agreed with the bishop after consultation with the committee: s 13 (1) (b).

5 Ibid s 13 (1) (c). For the procedure, see s 7 (b), and PARA 860 post: s 13 (1) (c). Pastoral schemes and orders may provide for the holding in plurality of benefices in more than one diocese: see ss 35 (1) (f), 38 (m), and PARA 866 post.

6 Ibid s 13 (2).

7 Ibid s 13 (3).

UPDATE

854 Proposals for holding benefices in plurality

TEXT AND NOTES--1968 Measure, as amended, consolidated in Pastoral Measure 1983 s 14; the bishop's power to formulate proposals is not restricted to proposals for the holding of benefices in plurality: see *infra*. See also s 14(1) (added by the Dioceses, Pastoral and Mission Measure 2007 ss 23(1), (3), 24, 32 in relation to pastoral schemes which do not contain a declaration of closure of a church for regular public worship and to pastoral orders).

TEXT AND NOTE 3--Now if after consultation with the pastoral committee the bishop considers that proposals which could be implemented by pastoral order, should be so implemented and the interested parties have consented to the proposals, then the pastoral committee must prepare a draft order to give effect to the proposals and submit it to the bishop for his approval: *ibid* s 14(1)(a) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 2).

TEXT AND NOTE 4--Now, the bishop may, by applying his seal, make the order under 1983 Measure s 8(4) (see PARA 878): 1983 Measure s 14(1)(b) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 2).

TEXT AND NOTE 5--Now the pastoral committee must send to the commissioners and the interested parties a copy of any order made under 1983 Measure s 14(1): s 14(1)(c) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 2).

TEXT AND NOTE 6--For 'the benefices' read 'any benefices': 1983 Measure s 14(2).

TEXT AND NOTE 7--Repealed: Pastoral (Amendment) Measure 1982 s 12(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(4) PLURALITIES/855. Presentation to benefices held in plurality.

855. Presentation to benefices held in plurality.

A pastoral scheme or order providing for the holding of two or more benefices¹ in plurality may provide for the exercise of rights of patronage of those benefices, including the exercise of those rights on a renewal of the provisions for plurality². Such a scheme or order may particularly provide for the designation or selection of the incumbent who is to hold all the benefices concerned and of the incumbent of any such benefice falling vacant before all the benefices concerned come to be held in plurality³. Provision may also be made for restricting the rights of presentation on the occurrence of such a vacancy³.

If, on the date of the coming into operation of any provision for a pastoral scheme for the holding of benefices in plurality, any of the benefices concerned is not vacant and the existing incumbent is not to hold the benefice by virtue of a designation by the scheme or any appointment made under it, the benefice is deemed to be vacated on that date⁴.

1 For the meaning of 'benefice', see PARA 768 note 1 ante.

2 Pastoral Measure 1968, ss 32 (4), 38 (k). See also s 17 (3), and PARA 853 ante.

3 Ibid ss 23 (2), 38 (f). This does not apply to the first rector of a team ministry to whom s 19 (4) applies or to the first incumbent of a benefice in a group ministry to whom s 20 (3) applies: s 23 (3).

4 Ibid s 24 (2) (a). See further PARA 922 post.

UPDATE

855 Presentation to benefices held in plurality

NOTES--1968 Measure consolidated in Pastoral Measure 1983; see *infra*.

NOTE 2--Now Pastoral Measure 1983 ss 32(4), 37(1)(i) (as renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTE 3--Now Pastoral Measure 1983 ss 24(2), 37(1)(f) (as renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTE 4--Now Pastoral Measure 1983 s 25(2)(a).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(i) Introduction/856. The Pastoral Measure 1968.

(5) PASTORAL SCHEMES AND ORDERS

(i) Introduction

856. The Pastoral Measure 1968.

The Pastoral Measure 1968 provides for changes in benefices and also deals with pluralities¹, the creation of new parishes, the establishment of team and group ministries, pastoral reorganisation and incidental matters². New pastoral committees are established by the Measure, which makes provision for the making of pastoral schemes and orders to carry out (inter alia) their recommendations³. Redundant churches are also dealt with by the Measure⁴.

The Measure extends to the whole of the provinces of Canterbury and York, except the Channel Islands and the diocese of Sodor and Man⁵. In general guild churches are also excluded from the operation of the Measure⁶. The Measure came into force on 1st April 1969⁷.

The provisions of the Measure apply to churches provided under any private or local Act⁸ passed before that date, and any provision of such an Act may be amended or revoked by a scheme made under the Measure if it appears to the Church Commissioners to be a provision inconsistent with, or rendered unnecessary by, the scheme or the provisions of the Measure applicable⁹.

1 As to pluralities, see PARA 853 ante.

2 See the Pastoral Measure 1968, Part II (ss. 16-41).

3 Ibid Part I (ss. 1-15).

4 Ibid Part III (ss. 42-66).

5 Ibid s 96 (2). The Measure may, however, be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measure 1931 and the Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957 or either of them (see PARA 388 note 4 ante), in accordance with those Measures: Pastoral Measure 1968, s 96 (2). It also enables a scheme, and any Order in Council confirming it, made for the purposes of so applying the Measure to repeal the legislation replaced by the Measure as it applies to the Channel Islands or either of them: s 96 (2).

6 Ibid s 92 (6). As to guild churches, see PARA 597 et seq ante. A declaration of redundancy may, however, be made by pastoral scheme with respect to a guild church (other than St Lawrence Jewry) (s. 92 (1)) and consequential provisions may be made as set out in s 92 (2)-(5).

7 I.e. the day jointly appointed by the Archbishops of Canterbury and York under ibid s 96 (3), and notified in the London Gazette dated 7th February 1969.

8 Any reference in the Pastoral Measure 1968 to any Act or Measure is to be construed as a reference to it as subsequently amended: s 90 (4).

9 Ibid s 93. Where it appears to the commissioners that a proposed pastoral or redundancy scheme will affect the rights (other than the patronage rights) of any person under such an Act, a copy of the draft scheme must in each case be served on him together with a notice under s 5 (1) inviting representations (see PARA 878 post): s 93 proviso. In the case of a pastoral scheme, he is then deemed to be an interested party in relation to the scheme: s 93 proviso. For the meaning of 'interested party', see PARA 862 note 2 post.

UPDATE

856 The Pastoral Measure [1983]

TEXT AND NOTES--The 1968 Measure was extensively amended by the Pastoral (Amendment) Measure 1982; both Measures are now consolidated in the Pastoral Measure 1983.

NOTE 2--Now 1983 Measure Pt II (ss 17-40).

NOTE 3--Now *ibid* Pt I (ss 1-16).

NOTE 4--Now *ibid* Pt III (ss 41-66).

TEXT AND NOTE 5--The 1983 Measure extends to the whole of the provinces except the Channel Islands and the Isle of Man; it may be applied to the Channel Islands and extended to the Isle of Man by Act of Tynwald: s 94(2).

NOTE 6--Now *ibid* s 89.

TEXT AND NOTE 7--The 1983 Measure came into force on 1 November 1983: s 94(4).

TEXT AND NOTES 8, 9--See now 1983 Measure s 90 (churches, land and burial grounds affected by private or local Acts subject to provisions of Measure).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(i) Introduction/857. Repealed legislation.

857. Repealed legislation.

The subjects now covered by the Pastoral Measure 1968 were previously covered by the Pluralities Act 1838¹, the Pluralities Act 1887² and the Pluralities Measure 1930³, which all restricted the holding of benefices in plurality. The Pluralities Act 1838 also dealt with the disunion of united benefices and its provisions concerning both that and pluralities have now been repealed, although other parts of the Act being of general application remain. The procedure for union of benefices was found in the Union of Benefices Acts 1860 and 1898 and the Union of Benefices Measures 1923 to 1952⁴, now all repealed⁵. After 1943 the creation of new parishes was governed by the New Parishes Measure 1943⁶, which simplified the previous law.

The Diocesan Reorganisation Committees Measure 1941⁷ and the Reorganisation Areas Measure 1944⁷ set up diocesan reorganisation committees to deal initially with war damage to churches and, under the later Measure, to make proposals concerning the reorganisation, endowment and staffing of parishes in certain areas, notably those in which there had been extensive war damage or a marked change in population. The Pastoral Reorganisation Measure 1949⁷ established in every diocese a pastoral committee, whose composition might be the same as that of the diocesan reorganisation committee, to make recommendations after a general survey of the diocese with particular regard to the matter of union of benefices.

- 1 The Pluralities Act 1838, ss 2-27, 95 (part), 106, were repealed by the Pastoral Measure 1968, s 95, Sch. 9.
- 2 The Pluralities Act 1887 was repealed in its entirety by the Pastoral Measure 1968, s 95, Sch. 9.
- 3 The Pluralities Measure 1930 was repealed in its entirety by the Pastoral Measure 1968, s 95, Sch. 9.
- 4 The Acts cited by this collective title were the Union of Benefices Measure 1923; Union of Benefices (Amendment) Measure 1936 (see s 18); and Union of Benefices (Disused Churches) Measure 1952 (see s 4 (2)).
- 5 Pastoral Measure 1968, s 95, Sch. 9.
- 6 The New Parishes Measure 1943, ss 1-12, 22-27, 30 (which dealt with the formation of new parishes and related matters, as to which see PARA 788 ante) were repealed by the Pastoral Measure 1968, s 95, Sch. 9.
- 7 These Measures were all repealed in their entirety by *ibid* s 95, Sch. 9.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(i) Introduction/858. Savings.

858. Savings.

Any scheme, order or instrument made or sealed before 1st April 1969¹, or afterwards by virtue of the transitional provisions², under the Reorganisation Areas Measure 1944³, the Pastoral Reorganisation Measure 1949 or the New Parishes Measure 1943⁴, continues to have effect, insofar as it is not revoked or spent⁵. The Pastoral Measure 1968 applies to such schemes, orders or instruments as though they had been made under that Measure, subject to necessary modifications⁶ and to any express provision of the scheme or order⁷.

1 I.e. the date of the coming into force of the Pastoral Measure 1968: see PARA 856 ante.

2 See *ibid* s 94, Sch. 8 para 1, and PARA 859 post.

3 The Reorganisation Areas Measure 1944, s 15, continues to apply to annuities granted thereunder before 1st April 1969: Pastoral Measure 1968, s 94, Sch. 8 para 7.

4 I.e. under the New Parishes Measure 1943, s 22.

5 See the Pastoral Measure 1968, s 94, Sch. 8 paras 1, 2. Generally, any licence, direction, designation, consent, notice or other thing given or done under the repealed provisions continues to have effect notwithstanding the repeal: Sch. 8 para 10. Any right of patronage created under any repealed provision is incapable of sale and any transfer of it for valuable consideration is void: Sch. 8 para 13. As to the saving of the Interpretation Act 1889, as applied by the Interpretation Measure 1925, see the Pastoral Measure 1968, Sch. 8 para 15.

6 *Ibid* Sch. 8 para 2. Any difficulty or question arising as to the application of the Measure, or to the effect of anything given or done under the repealed legislation, is determined by the directions of the Church Commissioners given under their seal: Sch. 8 para 12 (2). Where any scheme or part of a scheme made or pending under repealed legislation provides for the closure, demolition or appropriation to any use or uses of any church or part of a church, it is considered a redundancy scheme for the purposes of the application of the Measure (Sch. 8 para 3), save that s 61 (1) (see PARA 1076 post) does not apply unless a redundancy scheme so provides (Sch. 8 para 3 proviso). Where Sch. 8 para 3, applies, Sch. 8 para 2, does not: see Sch. 8 para 2 proviso. Any scheme under the Union of Benefices Act 1860, s 26, or the Union of Benefices Measure 1923, s 30, made by a bishop and approved by the Charity Commissioners before 1st April 1969, with respect to endowed lectureships, is also considered as a redundancy scheme: Pastoral Measure 1968, Sch. 8 para 5.

7 *Ibid* Sch. 8 para 12 (1). Despite this certain provisions postponing the creation of a new parish under the New Parishes Measure 1943, s 1, may be overridden: see the Pastoral Measure 1968, Sch. 8 para 4.

UPDATE

858 Savings

TEXT AND NOTES--For savings in relation to Pastoral Measure 1983, see *ibid* s 92, Sch 8 (amended by the Statute Law (Repeals) Act 2004).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(i) Introduction/859. Transitional provisions.

859. Transitional provisions.

Where a scheme or order was pending¹ on 1st April 1969 under any repealed legislation the latter continues to apply, to the exclusion of the Pastoral Measure 1968, for the purposes of completing the proceedings, up to and including publication of notice of the scheme or order². Any duties which would have been performed in relation to the pending scheme or order by a committee constituted under any repealed legislation are carried out by the pastoral committee³ of the diocese concerned⁴.

Where an existing scheme or order was not in operation on 1st April 1969 because its operation depended upon the occurrence of a vacancy in any benefice and the incumbent of the benefice concerned agreed with the pastoral committee that if he resigned the benefice compensation would be payable for any loss suffered by him in consequence of his resignation, he is entitled to compensation if he resigns⁵.

1 As to whether a scheme or order was 'pending', see the Pastoral Measure 1968, s 94, Sch. 8 para 14. The operation of Sch. 8 is not affected by any repeals made by the Statute Law (Repeals) Act 1974, s 1, Schedule, Part VII: Part VII, note.

2 Pastoral Measure 1968, Sch. 8 para 1. As to the application of this Measure to the scheme or order, once made, see PARA 858 ante.

3 As to the pastoral committees, see PARA 861 post.

4 Pastoral Measure 1968, Sch. 8 para 1 proviso.

5 Ibid Sch. 8 para 8. Compensation is payable under s 25, Sch. 4: see PARA 888 et seq post.

UPDATE

859 Transitional provisions

TEXT AND NOTES--For transitional provisions in relation to Pastoral Measure 1983, see *ibid* s 92, Sch 8 (amended by the Statute Law (Repeals) Act 2004).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(i) Introduction/860. Pastoral orders.

860. Pastoral orders.

Certain, although not all, of the powers exercisable under the Pastoral Measure 1968 are exercisable by pastoral order as well as by pastoral scheme¹. There are some procedural differences where a pastoral order is made. In both cases, it falls to the Church Commissioners to consider proposals emanating from the pastoral committee and submitted to the bishop². If it appears to them that the proposals, or some of them, could be implemented by the exercise of powers by a pastoral order, the commissioners must, or where part of the proposals only are concerned may, prepare a draft order to give effect to them³. Otherwise a draft scheme is prepared⁴. Ultimately the commissioners must obtain the bishop's consent to a draft scheme, after which they seal it and submit it for confirmation by Order in Council⁵, whereas in the case of a pastoral order the commissioners seal a copy of the draft order and submit it to the bishop who may, by applying his seal to it, make the order⁶.

1 See the Pastoral Measure 1968, s 38, which sets out the powers exercisable by pastoral order. They are noted in the relevant places in this title.

2 See *ibid* s 3, and PARA 862 post.

3 *Ibid* s 4 (3) (b), 4 (3) proviso (ii).

4 *Ibid* s 4 (3) (a).

5 *Ibid* s 7 (a).

6 *Ibid* s 7 (b).

UPDATE

860 Pastoral orders

TEXT AND NOTE 1--Now Pastoral Measure 1983; see s 37, as amended by the Team and Group Ministries Measure 1995 s 5 and the Dioceses, Pastoral and Mission Measure 2007 s 58(1).

NOTE 2--Now *ibid* s 4.

NOTES 3, 4--Now *ibid* s 5(4).

TEXT AND NOTES 5, 6--See now *ibid* s 8 (see PARA 878).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(ii) Functions of Diocesan Pastoral Committees/861. Duties of diocesan pastoral committees.

(ii) Functions of Diocesan Pastoral Committees

861. Duties of diocesan pastoral committees.

The pastoral committee¹ of a diocese must from time to time, as may be directed by or agreed with the bishop², review the arrangements for pastoral supervision in the diocese and, where it considers it desirable, make recommendations to the bishop³ for any of the matters for which provision may be made⁴ by a pastoral scheme or order⁵, including recommendations affecting other dioceses⁶.

The committee must at all times have particular regard to the making of provision for the cure of souls in the diocese as a whole⁷ and have regard to the traditions, needs and characteristics of individual parishes⁸. The committee may consider representations made to it by any person, hold such consultations and interviews and make such inquiries as it thinks fit⁹.

1 As to the appointment and constitution of pastoral committees, see PARA 521 ante.

2 For the meaning of 'bishop', see PARA 813 note 3 ante.

3 In accordance with the Pastoral Measure 1968, s 3: see PARA 862 post.

4 In accordance with *ibid* Part II (ss. 16-41) (other than s 36, which relates to the alteration of diocesan boundaries), under Part III (ss. 42-66), or under the Sharing of Church Buildings Measure 1970, s 1. These matters include changes in benefices, parishes, extra-parochial places, archdeaconries and rural deaneries; team and group ministries; churches, churchyards and parsonage houses; patronage; endowments, stipends and other remuneration; sinecures; redundant churches; and the sharing of church buildings.

5 Pastoral Measure 1968, s 2 (1); Sharing of Church Buildings Measure 1970, s 1 (1) (a). The main changes for which the authority of a scheme (as distinct from an order) is required are the creation of new benefices and parishes; the dissolution of existing ones (see the Pastoral Measure 1968, s 16); the establishment and termination of team and group ministries (see ss 19-21); the declaring of churches to be redundant (see s 28); and the making of sharing agreements in respect of consecrated churches and parsonage houses (see the Sharing of Buildings Measure 1970, s 1). For observations, in an appeal against a redundancy scheme, on the weight the Privy Council attaches to the recommendations of pastoral committees, bishops and the Church Commissioners, see *Elphick v Church Comrs* [1974] AC 562, PC, and PARA 881 post.

6 Thus the recommendations may include such recommendations affecting another diocese or other dioceses as can be implemented under the Pastoral Measure 1968, s 35 (see PARA 866 post), and such recommendations and a scheme or order implementing them may be proceeded with, made and (in the case of a scheme) confirmed under that Measure (s. 11 (1), (2)), although (1) before ascertaining the views of interested parties in another diocese the pastoral committee must obtain the consent of the bishop of that diocese, who must consult his pastoral committee before consenting (s. 11 (1) (a)); and (2) the bishop of the first diocese must not submit draft proposals to the Church Commissioners under s 3 (6) without the consent of the other bishop and of the archbishop or, if both provinces are concerned, both archbishops (s. 11 (1) (b)).

7 *Ibid* s 2 (2) (a). This includes the provision of appropriate spheres of work and conditions of service for all persons engaged in the cure of souls and the provision for them of reasonable remuneration: s 2 (2) (a).

8 *Ibid* s 2 (2) (b). For the meaning of 'parish', see PARA 534 ante.

9 *Ibid* s 15 (2).

UPDATE

861 Duties of diocesan pastoral committees

TEXT AND NOTES--1968 Measure consolidated, with amendments in Pastoral Measure 1983; see generally s 2 (repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7). See now Pt VI (ss 52, 53); and PARA 519.

NOTE 3--Now 1983 Measure s 3.

NOTE 6--Now 1983 Measure s 12 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 7); in head (2), draft proposals submitted under the 1983 Measure s 4(1) and requirement for consent of archbishop or both archbishops omitted.

NOTE 9--Now *ibid* s 16(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(ii) Functions of Diocesan Pastoral Committees/862. Draft proposals.

862. Draft proposals.

Before deciding to make any recommendations to the bishop¹ the pastoral committee, so far as is practicable, must ascertain the views of the interested parties² and, in the case of a recommendation that a church be declared redundant, of the Council for Places of Worship³. Where the interested parties are incumbents or vicars in a team ministry or parochial church councils the committee must, before reaching its decision, afford each incumbent or vicar and each council or its representatives an opportunity, if desired, of meeting the committee or a sub-committee or its representatives⁴.

The committee must then formulate its recommendations in draft proposals and submit them to the bishop, together with any comments and information furnished by the Council for Places of Worship⁵.

If the bishop approves the draft proposals he must, having obtained the necessary consents if other dioceses are involved⁶, submit the proposals to the Church Commissioners⁷, who must send copies to the interested parties informing them that, if the commissioners proceed to prepare a draft scheme or order, they will be given an opportunity of making representations⁸.

1 For the meaning of 'bishop', see PARA 813 note 3 ante.

2 Pastoral Measure 1968, s 3 (1). In relation to any recommendations, proposals or draft scheme or order 'interested parties' means the incumbents and patrons of any benefices affected, including vicars in a team ministry; the parochial church councils of any parishes affected; the archdeacons and rural deans of any archdeaconries and rural deaneries affected or to which any such benefices or parishes belong; and (save in the case of proposals and orders under s 13 (see PARAS 537, 538, 854 ante)) any local planning authorities concerned: ss 3 (2), 90 (1). For the meaning of 'patron', see PARA 813 note 5 ante; for the meaning of 'benefice', see PARA 768 note 1 ante; and for the meaning of 'parish', see PARA 534 ante. 'Local planning authority' means, outside Greater London, the district planning authority (ie the district council), and in Greater London, the Greater London Council and (in relation to the City of London) the Common Council or (in relation to a London borough) the council of that borough: s 90 (1); Town and Country Planning Act 1971, s 1 (1); Local Government Act 1972, ss 182 (1), 251, Sch. 29 para 39. If the recommendations etc. are limited to creating, naming, altering or dissolving archdeaconries and rural deaneries, no patrons count as interested parties: Pastoral Measure 1968, s 3 (2) proviso. For the purpose of s 2 (2) a change in the patronage of the benefice is deemed to affect that benefice and its parish or parishes: s 3 (2). For the position where planning legislation applies to any land whose development is regulated by the Pastoral Measure 1968, see s 91; Redundant Churches and other Religious Buildings Act 1969, s 7 (3); and PARA 1122 post. Incumbents, vicars in team ministries and parochial church councils must be given an opportunity to meet the committee or its representative: Pastoral Measure 1968, s 3 (3). As to interested parties in the case of a pastoral scheme affecting a guild church, see PARA 608 note 3 ante.

3 Ibid s 3 (4). As to the council, see PARA 1321 note 8 post.

4 Ibid s 3 (3). In the case of a recommendation for a union of benefices or otherwise for the dissolution of a benefice, for the holding of benefices in plurality, for the establishment of a team or group ministry, or for the abolition of the office of vicar in a team ministry, the incumbent of the benefice or each benefice or the vicar must if he so desires have an opportunity of meeting the full committee: s 3 (3) proviso.

5 Ibid s 3 (5). The bishop may, with the committee's agreement, amend the draft proposals: s 3 (5).

6 See ibid s 11 (1) (b), and PARA 861 ante.

7 He must also send the commissioners any comments and information furnished by the Council for Places of Worship: s 3 (6).

8 Ibid s 3 (6).

UPDATE

862 Draft proposals

TEXT AND NOTES--Replaced.

Before deciding to make any recommendations to the bishop, the pastoral committee must so far as may be practicable ascertain the views of the interested parties¹ or, in the case of interested parties being local planning authorities, invite them to express their views².

In the case of interested parties, being incumbents or vicars in a team ministry, the pastoral committee must, before reaching its decision, afford to each incumbent or vicar, if he so desires, an opportunity of meeting the committee or sub-committee or representative, but, in the case of a recommendation for a union of benefices or otherwise for the dissolution of any benefice or the holding in plurality of any benefice or benefices, or the establishment of a team or group ministry for any benefice or benefices, or the abolition of any office of vicar in a team ministry, the incumbent of the benefice or each of the benefices or the holder of the office of vicar must have an opportunity of meeting the committee itself, as distinct from a sub-committee or representative, if he so desires³. In the case of interested parties, being parochial church councils, the committee must, before reaching its decision, afford to each council or its representative, if the council so requests, an opportunity of meeting the committee or, if the committee so decides, a sub-committee or, with the council's consent, a representative of the committee⁴.

Before deciding to make a recommendation that a declaration of redundancy be made in respect of any church the committee must (a) ascertain the views of any local planning authority or authorities concerned; (b) notify the Council for Places of Worship of the church or churches in respect of which the committee might decide to make such a recommendation and obtain from it a copy of the report which the Council is required⁵ to prepare⁶. As soon as practicable after receiving a notice⁷ the Council must prepare a report about the historic and architectural qualities of each church mentioned in the notice and of other churches in the area, the historic and aesthetic qualities of the contents of that and those churches and any special features of any churchyard or burial ground annexed to any of them, and send a copy of it to the commissioners, the diocesan board of finance and the pastoral committee⁸.

When the committee has decided to make recommendations, it must formulate them in draft proposals and submit them to the bishop, and the bishop may, with the committee's agreement, make such amendments of the draft proposals as appear to him desirable⁹. The committee must annexe to the draft proposals a statement of the views of the interested parties and, if those proposals include a proposal that a declaration of redundancy be made in respect of any church, it must annexe a copy of the report prepared by the Council¹⁰ to the draft proposals¹¹.

If the bishop approves, either with or without amendments, draft proposals submitted to him¹², he must submit the proposals as approved by the commissioners and inform the pastoral committee that he has done so¹³. The pastoral committee must send a copy of the proposals as approved by the bishop to every interested party with a notice informing him that if the Commissioners prepare a draft scheme or order to give effect to the proposals he will be given an opportunity of making representations with respect thereto¹⁴.

1 'Interested parties', in relation to any recommendations, proposals or draft scheme or order, means (a) incumbents of any benefices which would be affected by the implementing thereof,

including vicars in a team ministry established for the area of any such benefice; (b) the patrons of any such benefices; (c) the parochial church councils of any parishes which would be so affected; (d) the priests in charge of any conventional districts wholly or partly within the area of any benefices which would be so affected and the parochial church councils of such districts; (e) the archdeacons and rural deans of any archdeaconries and rural deaneries which would be so affected or to which any such benefices or parishes belong and the lay chairmen of the deanery synods of any such deaneries; and (f) the local planning authority or authorities concerned: Pastoral Measure 1983 s 3(2). For these purposes a change in the patronage of a benefice is deemed to affect that benefice and the parish or parishes thereof: s 3(2). 'Incumbent', in relation to a benefice in respect of which a suspension period has been declared and is for the time being in force means the priest in charge thereof: s 3(11).

'Interested parties', in relation to any recommendations, proposals, draft scheme or order which are or is limited to creating, altering or dissolving archdeaconries or rural deaneries, or altering the name of any archdeaconry or rural deanery, means (a) the parochial church councils of any parishes for which a change of archdeaconry or rural deanery, or an alteration of the name thereof, is contemplated or proposed and the parochial church councils of any conventional districts wholly or partly within such parishes; (b) the incumbents of benefices to which such parishes belong and the priests in charge of such districts; and (c) the archdeacons and rural deans of the archdeaconries and deaneries affected and the lay chairmen of the deanery synods of such deaneries: s 3(3). Where a team ministry (see PARA 870) is established for the area of a benefice, the reference in (b) to the incumbents of benefices is construed, in relation to that benefice, as a reference to all the persons who constitute the team: s 3(3); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 11.

In the case of recommendations under the 1983 Measure s 2A (see PARA 540), and proposals and orders under s 14 (see PARAS 537, 538, 854), the local planning authority or authority is not included among the interested parties: s 3(4) (amended by the Synodical Government (Amendment) Measure 2003 s 2(3)).

2 1983 Measure s 3(1). See also s 3(7)(a), TEXT AND NOTE 6. The 1983 Measure s 3(1), (2), (10) is amended and s 3(4), (7), (8) is omitted in relation to pastoral schemes which do not contain a declaration of closure of a church for regular public worship and to pastoral orders by the Dioceses, Pastoral and Mission Measure 2007 ss 23(1), (3), 24, 25. The 1983 Measure s 3(2), (7), (8) is amended, s 3(3), (4) is omitted and s 3(10) is substituted in relation to pastoral church buildings schemes by the 2007 Measure ss 23(4), 35, 36.

3 1983 Measure s 3(5). See also Sch 1 paras 10, 11; and PARA 521.

4 *ibid* s 3(6). See also Sch 1 para 11; and PARA 521.

5 *Ie* under *ibid* s 3(8).

6 *Ibid* s 3(7).

7 *Ie* under *ibid* s 3(7).

8 *Ibid* s 3(8).

9 *Ibid* s 3(9).

10 *Ie* under *ibid* s 3(8).

11 *Ibid* s 3(10).

12 *Ie* under *ibid* s 3(9).

13 *Ibid* s 4(1). Section 4 is substituted in relation to pastoral schemes which do not contain a declaration of closure of a church for regular public worship and to pastoral orders by the Dioceses, Pastoral and Mission Measure 2007 ss 23(1), (3), 24, 26.

14 1983 Measure s 4(2) (amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 2).

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863. Recommendations by joint pastoral committees.

A joint pastoral committee is constituted¹ where it appears to bishops of two or more dioceses desirable in order to consider diocesan boundaries and the pastoral arrangements in adjacent areas². Such a committee may make recommendations to the bishops of the dioceses concerned³, and the same provisions⁴ apply to those recommendations and their formulation and submission as draft proposals as apply to recommendations and draft proposals of a pastoral committee, and the same proceedings may be taken on them⁵, save that the bishops or registrars of the dioceses concerned act in place of the bishop or registrar⁶.

1 As to the constitution of joint pastoral committees, see the Pastoral Measure 1968, s 12 (2), and PARA 457 ante.

2 Ibid s 12 (1): see PARA 457 ante.

3 Ibid s 12 (5). The recommendations are such the implementing of which would require the exercise of powers under s 36 (alteration of diocesan boundaries: see PARA 457 ante): s 12 (1).

4 Ie the provisions of ibid s 3: see PARA 862 ante.

5 Ie under ibid ss 3-9: see PARA 878 et seq post.

6 Ibid s 12 (5) (a). Further, the limitation of s 4 (3) to powers exercisable other than under s 36 clearly does not apply, and so much of s 4 (3) as relates to the preparation of a draft order does not apply: s 12 (5) (b). For s 4 (3), see PARA 878 post.

UPDATE

863 Recommendations by joint pastoral committees

NOTES--Consolidated in Pastoral Measure 1983; see s 13 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 3), which provides that joint pastoral committees are to be renamed joint boundary committee.

TEXT AND NOTE 2--The consent of the Dioceses Commission is required before a committee is constituted: ibid s 13(1).

NOTES 4, 5--Now ibid ss 3-10.

NOTE 6--1968 Measure s 4(3) now 1983 Measure s 5(4).

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A. BENEFICES, PARISHES, EXTRA-PAROCHIAL PLACES AND DIOCESAN BOUNDARIES

864. Changes in benefices and parishes.

A pastoral scheme¹ may provide for the creation, whether by union or otherwise, of new benefices or parishes², for the dissolution of existing benefices or parishes³, for the alteration of the areas of existing benefices or parishes (including the transfer of a parish from one benefice to another)⁴ or the definition of their boundaries⁵, or for the creation of new extra-parochial places, the incorporation in parishes of existing extra-parochial places or the alteration or definition of the boundaries of existing extra-parochial places⁶. A pastoral scheme must name every new benefice and new parish created by the scheme, and a pastoral scheme or order may alter the name of any benefice or parish⁷.

A pastoral scheme providing for the union of two or more benefices may provide for uniting all the parishes within the area of the new benefice or for uniting some but not all those parishes, or may leave them as separate parishes⁸. A scheme may also provide for the creation of a new parish with full parochial status, notwithstanding that the parish so created will have no parish church when the provision comes into operation⁹.

¹ As to pastoral schemes, see PARA 856 et seq ante.

² Pastoral Measure 1968, s 16 (1) (a). For the meaning of 'benefice', see PARA 768 note 1 ante; for the meaning of 'parish', see PARA 534 ante.

³ Ibid s 16 (1) (b).

⁴ A pastoral scheme may also make somewhat similar provisions in relation to archdeaconries and rural deaneries: see ibid s 18, and PARAS 498, 526 ante.

⁵ See ibid s 16 (1) (c). This power may also be exercised by pastoral order, but not so as to transfer from any benefice or parish any church used for public worship: s 38 (a).

⁶ See ibid s 16 (1) (d). This power may also be exercised by pastoral order, but not so as to transfer from any benefice or parish any church used for public worship: s 38 (a). As to the alteration of diocesan boundaries by a pastoral scheme, see s 36, and PARA 457 ante.

⁷ Ibid ss 16 (2), 38 (b). See also notes 5, 6 supra.

⁸ Ibid s 16 (3). As to the holding of benefices in plurality under a pastoral scheme, see s 17, and PARA 853 ante.

⁹ Ibid s 16 (4). Where a parish has no parish church the bishop must make provision for public worship by licensing one or more buildings for such worship: s 29 (1). He may designate any building so licensed as the parish centre of worship: s 29 (2); see further PARA 539 ante. For the meaning of 'bishop', see PARA 813 note 3 ante. As to supplementary provisions applying generally to various matters arising out of pastoral schemes and orders, including provisions conferring supplementary powers exercisable by pastoral schemes and orders, see s 41, Sch. 3.

UPDATE

864 Changes in benefices and parishes

NOTES--Consolidated in Pastoral Measure 1983; see s 17. Although a pastoral scheme cannot be made under the 1983 Measure in order to deprive an incumbent of his benefice or to punish him, the Church Commissioners may approve a scheme under the 1983 Measure, if it is justified thereunder, even though different relief could be obtained by recourse to the Incumbents (Vacation of Benefice) Measure 1977 (see PARA 733A): *Cheesman v Church Comrs* [1999] 3 WLR 630, PC.

NOTE 4--Now Pastoral Measure 1983 s 19.

NOTES 5-7--1968 Measure s 38 now 1983 Measure s 37 (amended by the Team and Group Ministries Measure 1995 s 5).

NOTE 8--1968 Measure s 17 now 1983 Measure s 18.

NOTE 9--1968 Measure s 29 now 1983 Measure s 29. 1968 Measure s 41, Sch 3 now 1983 Measure s 40, Sch 3 (s 40 amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 26).

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865. Churches and church buildings.

A pastoral scheme may provide for a new church¹ and for it to become, after its approval by the Church Commissioners as suitable for a parish church and once it has been consecrated², a parish church in the parish³ in which it is situated either in substitution for an existing parish church or otherwise⁴.

A pastoral scheme may authorise the making of sharing agreements on behalf of the Church of England in respect of consecrated churches and parsonage houses⁵ which under the agreement will be in the joint ownership of that and any other church⁶. A scheme authorising the making of such an agreement must specify the church or parsonage house to which it relates and may specify terms and conditions subject to which the authority is given⁷.

1 'Church' means a church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England, and includes a building used or intended to be used partly for the purpose of such public worship and partly for the purpose of a church hall, whether the whole building is consecrated or only the part of it to be used for worship: Pastoral Measure 1968, s 90 (1).

2 Any reference in the Pastoral Measure 1968 to the consecration of a church is to be construed, in the case of a building used partly for worship and partly as a church hall, as including a reference to the consecration of the part to be used for worship: s 90 (1).

3 For the meaning of 'parish', see PARA 534 ante.

4 Pastoral Measure 1968, s 27 (5). Where a pastoral scheme creates a new parish or alters a parish, special provisions apply in relation to parish churches and consequential matters: see s 27, and PARA 538 ante. A pastoral scheme may also make a declaration of redundancy in respect of a church: see s 28, and PARA 1119 post. Unless this has been done, the scheme may make provision for the use of a churchyard or other land annexed or belonging to a church or a burial ground vested in the incumbent of the benefice: see s 30, and PARA 1074 post.

Where a benefice is dissolved by a pastoral scheme and the Church Commissioners hold money for expenditure on capital purposes in connection with a parsonage house for the benefice, or money arising in connection with its disposal, the Parsonages Measure 1938 applies to such money as it applies to that arising from the sale of property of the benefice thereunder, with necessary modifications: Pastoral Measure 1968, s 33 (5). The scheme may, however, provide that such money or any part of it be paid into the diocesan pastoral account: s 33 (5) Proviso.

5 For the meaning of 'parsonage house', see PARA 814 note 5 ante, applied by the Sharing of Church Buildings Measure 1970, s 3.

6 Ibid s 1 (1) (b). The provisions of the Pastoral Measure 1968 apply to such schemes, recommendations leading to them and proceedings to be taken on them as they apply to those relating to other matters contained in Part II (ss. 16-41): Sharing of Church Buildings Measure 1970, s 1 (1) (c).

7 Ibid s 1 (2).

UPDATE

865 Churches and church buildings

TEXT AND NOTES--There is to be a body known as the Church Buildings Council which has various duties and powers in relation to the care and conservation of churches: see the Dioceses, Pastoral and Mission Measure 2007 ss 54-57, Sch 4.

NOTES 1, 2--Now Pastoral Measure 1983 s 87(1).

TEXT AND NOTE 4--See now *ibid* s 27(1).

NOTE 4--1968 Measure ss 27, 28, 30 now 1983 Measure ss 27, 28, 30. 1968 Measure s 33(5) now 1983 Measure s 33(4), which only applies where a benefice is dissolved by a pastoral scheme in consequence of a union of benefices; now the 1938 Measure has effect with the modification that references to the benefice for which the money was held or to which the property belonged are construed as references to the new benefice created by the union.

Notwithstanding anything in the 1938 Measure s 5 (see *PARA 1162*), a pastoral scheme or order may provide that any money arising from any sale or exchange under the 1938 Measure of any part of the property of a benefice specified in the scheme or order, or so much of that money as may be so specified, must (a) be held by the commissioners for the benefit of any other benefice so specified; or (b) be paid into the capital account of the diocesan stipends fund; or (c) be paid into the diocesan pastoral account; or (d) be applied towards the provision, restoration, improvement or repair of a church or a place of worship within the meaning of 1983 Measure s 46 (see *PARA 1120*) or a parsonage house or a house for a vicar in a team ministry or an assistant curate: ss 33(5), 37(1)(i) (renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTES 6, 7--Now 1983 Measure s 17(5).

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866. Other dioceses.

A pastoral scheme may, with the necessary consents¹, apply to a diocese other than the one in which the proposals for it originated, to the extent that it may provide for (1) the union of benefices or parishes comprising one or more benefices or parishes from each of the two dioceses²; (2) creating a new benefice (otherwise than by union) for an area comprising areas from both dioceses³; (3) the transfer of a parish from a benefice in one diocese to a benefice in the other⁴; (4) creating a new extraparochial place comprising areas from both dioceses or transferring such a place from one diocese to the other, whether by means of incorporation in a parish or otherwise⁵; (5) altering the boundaries between a parish or extra-parochial place in one diocese and a parish or extra-parochial place in the other⁶; (6) the holding in plurality of benefices comprising one or more benefices from each diocese⁷; and (7) establishing a group ministry⁸ for a group of benefices comprising one or more benefices from each diocese⁹. In relation to any benefice, parish or extra-parochial place affected by any of the above provisions, provision may also be made by the provide in relation to any one of them when wholly comprised in one diocese, subject to necessary or expedient modifications¹⁰.

The above powers may be exercised in relation to more than one diocese other than that in which the proposals for the scheme originated, in which case they include power to create a benefice or parish (by union or otherwise) or an extra-parochial place comprising benefices, parishes or areas from all the dioceses concerned, to alter a benefice, parish or extra-parochial place so as to comprise areas from all those dioceses or to establish a group ministry for benefices from all those dioceses¹¹.

A pastoral scheme to which these provisions¹² apply must allocate any benefice, parish or extra-parochial place which includes areas from two or more dioceses to such one of those dioceses and, within it, to such archdeaconry and rural deanery as may be designated by the scheme¹³. Where any such entity is transferred from one diocese to another by a pastoral scheme, special supplementary provisions apply¹⁴.

1 See the Pastoral Measure 1968, s 11, and PARA 861 note 6 ante.

2 Ibid s 35 (1) (a). For the meaning of 'benefice', see PARA 768 note 1 ante; for the meaning of 'parish', see PARA 534 ante.

3 Ibid s 35 (1) (b).

4 Ibid s 35 (1) (c).

5 Ibid s 35 (1) (d).

6 Ibid s 35 (1) (e).

7 Ibid s 35 (1) (f). A pastoral order may make similar provision, provided the necessary consent under s 13 (2) (see PARA 854 ante) has been obtained: s 38 (m).

8 As to group ministries, see PARA 870 et seq post.

9 Pastoral Measure 1968, s 35 (1) (g). Such a scheme must make such transfers of benefices from one diocese to another as are necessary to bring the whole group within one diocese: s 35 (4).

10 Ibid s 35 (1). Cf. the powers given by s 35 (1) with those given by s 36 (see PARA 457 ante) as to the alteration of diocesan boundaries, which are only exercisable by a joint pastoral committee.

11 Ibid s 35 (2).

12 Ie the provisions of ibid s 35.

13 Ibid s 35 (3).

14 Thus (1) property vested in the diocesan board of finance of the old diocese (ie the diocese from which the benefice, parish or extra-parochial place or part of it is transferred: ibid s 41, Sch. 3 para 16 (4)), and held for ecclesiastical purposes relating solely to the entity transferred, vests in the diocesan board of finance of the new diocese (ie the diocese to which it is transferred: Sch. 3 para 16 (4)) and is held for those purposes (Sch. 3 para 16 (1) (a)); (2) documents and maps relating solely to that entity are transferred from the registrar or other officer of the old diocese to his counterpart in the new (Sch. 3 para 16 (1) (b)); (3) any licence granted by the bishop of the old diocese in relation to it, or any church in it, or any order, direction or action made, given or taken by him, the diocesan board of finance or any clerical or lay officer or body of the old diocese relating to it or any property of it is deemed to have been granted by the bishop of the new diocese or made, given or taken by the bishop, diocesan board of finance or corresponding office or body in it (Sch. 3 para 16 (1) (c), (d)). The diocesan board of finance of either diocese may apply under Sch. 3 para 11 (5), for a scheme under the Charities Act 1960, s 18: Pastoral Measure 1968, Sch. 3, PARA 16 (1) (e). Corresponding provisions apply where part only of such an entity is transferred: Sch. 3 para 16 (2). Where diocesan boundaries are altered as a result of a pastoral scheme, the Church Commissioners may make, as respects each of the dioceses affected, such adjustments as they consider desirable in the capital or income accounts of the dioceses affected, such adjustments as they consider desirable in the capital or income accounts of the diocesan stipends fund, pastoral account or any other fund, account or allocation that they hold or make: Sch. 3 para 16 (3).

UPDATE

866 Other dioceses

NOTES--Consolidated in Pastoral Measure 1983: see s 35.

TEXT AND NOTES 1-9--Also head (2A) for the transfer of the area of a benefice from the diocese in which it is to the other diocese: Pastoral Measure 1983 s 35(1)(c).

NOTE 1--Now Pastoral Measure 1983 s 12 (amended by the Dioceses, Pastoral and Mission Measure Sch 5 para 2).

TEXT AND NOTE 6--A pastoral order may make similar provision, but not so as to transfer from any benefice or parish any church used for public worship: Pastoral Measure 1983 s 37(1)(m) (renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTE 14--Now Pastoral Measure 1983 s 40, Sch 3 para 16. The reference is now to the Charities Act 1993 s 16: Pastoral Measure 1983 Sch 3 para 16(1) (amended by the Charities Act 1993 Sch 3 para 18(4)). The commissioners may make such adjustments as they consider desirable in any fund, account or allocation after consultation with the diocesan board of finance of each of the dioceses affected and the diocesan board of finance of each of those dioceses must make such adjustments in the capital or income accounts of the diocesan stipends fund or the diocesan pastoral account as the commissioners, after consultation with the diocesan board of finance of each of those dioceses, may direct: Pastoral Measure 1983 Sch 3 para 16(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 8(c)).

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867. Sinecures.

A pastoral scheme may provide for merging with a benefice any sinecure rectory, or any office of minister of a church or chapel without cure of souls¹. Provision may further be made, in particular, for the vesting of any such church or chapel and its use either as a parish church or a chapel of ease or for making a declaration of redundancy in respect of it². The transfer, vesting or disposal of rights of patronage, endowments or other property relating or belonging to any such rectory or office may also be provided for on such terms as may be specified in the scheme³.

1 Pastoral Measure 1968, s 34: see PARA 774 ante. The scheme may also make provision for any of the matters for which provision is or may be made under Part II (ss. 16-41) in relation to a benefice: s 34. For the Church Commissioners' power to determine the boundaries of land vesting in them, the diocesan board of finance, the redundant churches fund or an incumbent, see s.79, and PARA 1125 post.

2 Ibid s 34 (a).

3 Ibid s 34 (b).

UPDATE

867 Sinecures

NOTES--Now Pastoral Measure 1983 s 34.

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868. Patronage.

When provisions as to patronage are made by a pastoral scheme¹, regard must be had to the interests of persons whose rights of patronage cease to exist by virtue of the scheme² and the interests of patrons of benefices to be held in plurality³. Where there are pastoral or practical objections, however, the scheme need not provide for conferring new patronage rights on the first-mentioned persons, or on all of them, or for sharing the exercise of the patronage rights of the benefices to be held in plurality among the patrons of those benefices or all of them⁴.

1 Ibid in the exercise of the powers conferred by the Pastoral Measure 1968, s 32 (1)-(5): see notes 2, 3 infra.

2 As to provision by a pastoral scheme for the exchange or transfer of any benefice or church, whether or not otherwise affected by the scheme, see *ibid* s 32 (1), and PARA 802 ante; as to the patronage of new benefices created by a scheme, see s 32 (2), (3), and PARA 789 ante; and as to the cesser of rights of patronage of a benefice dissolved by a scheme or a chapel of ease which so becomes a parish church, see s 32 (5), and PARA 826 ante.

3 Ibid s 32 (6). For patronage rights where a pastoral scheme provides for the holding of two or more benefices in plurality, see s 32 (4), and PARA 855 ante. A scheme providing for the vesting or exercise of rights of patronage under s 32 (2) or s 32 (4) may also, where appropriate, provide for applying to those rights any trusts formerly applicable to rights extinguished or altered as a result of the scheme: s 32 (8).

4 Ibid s 32 (6). Any provision respecting patronage rights made by or by virtue of s 32 (1)-(6) is subject to any provision made under s 23 (which applies Sch. 3 para 4); s 32 (7); see PARA 869 post. If a team or group ministry is established for the benefices concerned, any rights of patronage exchanged, transferred or created under s 32 are subject to the provisions of ss 19 (4), 20 (3), Sch. 3 paras 1, 2: s 32 (9); see PARA 870 et seq post. The provisions of Sch. 3 para 5, are applied to patronage rights affected by pastoral schemes as mentioned therein: s 32 (10); see PARAS 802, 804, 835 ante.

UPDATE

868 Patronage

TEXT--Where any right of patronage of a benefice is transferred to or becomes vested in any person by virtue of a pastoral scheme, the registrar of the diocese in which that benefice is must register him as the patron of that benefice on receiving a copy of the Order in Council confirming the scheme: Patronage (Benefices) Measure 1986 s 29(2).

NOTES--Consolidated in Pastoral Measure 1983; see s 32 and table in PARA 1435A.

NOTE 4--Section 32(10) and Sch 3 para 5, as consolidated in 1983 Measure s 32(10) and Sch 3 para 6 repealed: Patronage (Benefices) Measure 1986 Sch 5.

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869. Incumbents.

A pastoral scheme providing for the creation of a new benefice¹ by the union of two or more benefices may provide for the designation or selection of the first incumbent of the new benefice and of the incumbent of any of the benefices concerned which falls vacant before the union takes effect, and for restricting the rights of presentation on any such vacancy². This does not, however, apply to the first rector in a team ministry or the first incumbent of a benefice in a group ministry³.

Generally, where any office attaches to a benefice which is united with another or others by a pastoral scheme, that office attaches to the new benefice created by the union unless the scheme otherwise provides⁴.

1 For the meaning of 'benefice', see PARA 768 note 1 ante.

2 Pastoral Measure 1968, s 23 (1). The provisions of Sch. 3 para 4 (see PARAS 835, 843 ante), are applied with respect to the admission and induction of incumbents of benefices created or affected by pastoral schemes: s 23 (4).

3 Ibid s 23 (3). For the provisions which apply to them, see ss 19 (4), 20 (3), and PARAS 870, 872 post.

4 Ibid s 22 (5).

UPDATE

869 Incumbents

NOTES--Now Pastoral Measure 1983 s 24 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 6).

TEXT AND NOTE 2--Now a pastoral scheme providing for the creation of a new benefice may provide for the designation or selection of the first incumbent of the new benefice and of the incumbent of any benefice concerned which falls vacant before the new benefice comes into being, and for rights of presentation on any such vacancy: *ibid* s 24(1).

Subject to any provision for the designation or selection of the first incumbent of a new benefice created by a pastoral scheme, the Patronage (Benefices) Measure 1986 ss 7-16 (see PARAS 818A.1-8) apply to the making of the first presentation to the benefice as if the coming into operation of the scheme were the occurrence of a vacancy in the benefice: *ibid* s 29(3).

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B. TEAM AND GROUP MINISTRIES

870. Constitution of team ministries.

A pastoral scheme may provide for the establishment of a team ministry for the area of any benefice¹, namely for the sharing of the cure of souls in that area by a team of ministers consisting of the incumbent of the benefice which (if it is not one already) becomes a rectory², and one or more other ministers who have the title of vicar and a status equal to that of an incumbent of a benefice³. The office of rector in a team ministry may, depending on the scheme, be either a freehold office or an office to be held for a specified term of years⁴. The rector is a corporation sole and as such holds the property of the benefice during his term of office⁵. The office of vicar in a team ministry is an ecclesiastical office constituted by the scheme held for a term of years specified in the scheme or fixed in accordance with the bishop's licence, and the vicar has the same security of tenure as an incumbent of a benefice⁶.

The scheme may designate the first rector or first holder of any office of vicar⁷. If it does not, or when it becomes necessary to appoint a subsequent rector, the scheme must provide for the presentation of the rector either by a patronage board constituted by a pastoral scheme⁸, or by the diocesan board of patronage⁹. If however, the sole patron is the bishop, the rector is then collated by the bishop¹⁰.

The vicars are chosen by the bishop and rector jointly; they are appointed by licence under seal and are publicly admitted in a church in the area¹¹. A scheme or order may make provision as to places of residence for vicars in team ministries¹².

A pastoral scheme may terminate a team ministry by abolishing the offices of vicars and restoring the rectory, if it is held for a term of years, to the status of a freehold office¹³; and a scheme or order may alter such a ministry by abolishing one or more of the offices of vicar or increasing the number of vicars¹⁴ or change the office of rector from a freehold to a term of years or alter the term of years for which an office of rector or vicar is held¹⁵.

If a benefice for which a team ministry has been established is dissolved by a pastoral scheme the offices of the vicars (as well as that of rector) cease to exist¹⁶.

1 For the meaning of 'benefice', see PARA 768 note 1 ante. Where two or more benefices are held in plurality and a team ministry is established or is to be established for the area of one of those benefices a pastoral scheme may provide for extending the operation of the team ministry, so long as the plurality continues, to the cure of souls in the area of any other benefice so held: Pastoral Measure 1968, s 19 (11). In this event s 19 (6), (7), (10), Sch. 3 para 3 (1)-(4), have effect as if references to the area of the benefice were references to the combined areas of the benefices concerned: s 19 (11).

2 Ibid s 19 (1) (a).

3 Ibid s 19 (1) (b).

4 Ibid s 19 (2). The term of years may be extended: s 19 (5). The fact that the office is held for a term of years is not to affect its other attributes as a benefice: s 19 (2).

5 Ibid s 19 (2).

6 Ibid s 19 (3). The term of years may be extended: see s 19 (5). The tenure of the vicar's office is unaffected by a vacancy in the benefice of the rector: s 19 (3).

7 Ibid s 19 (4). The first rector may be the existing incumbent: s 19 (4).

8 The board consists of the bishop as chairman, with such other members as the scheme may provide, regard being had to the interests of persons who previously had patronage rights in the benefices concerned, although they need not be members where there are pastoral or practical objections: *ibid* Sch. 3 para 1 (3). For the meaning of 'bishop', see PARA 813 note 3 ante. The bishop may authorise a suffragan or assistant bishop or archdeacon to exercise his voting rights at a meeting of the board and any other member may authorise a representative to act and vote on his behalf: Sch. 3 para 1 (4). The board is a body corporate for the purpose of holding the rights of patronage conferred upon it, and has a seal and power to regulate its own procedure: Sch. 3 para 1 (5). The right to be a member of the board is transferable *inter vivos* and on death, but is not saleable and may not be deemed to be a right in land: Sch. 3 para 1 (7). People holding such rights must give the diocesan registrar particulars of their rights and of any transfer or devolution of them, or those rights may be disregarded for the purposes of Sch. 3 para 1: Sch. 3 para 1 (8).

9 Ibid s 19 (4) (a), Sch. 3 para 1 (1). As to diocesan boards of patronage, see PARA 790 ante. If the scheme provides for presentation by the diocesan board of patronage the scheme must give those persons specified in it who would have been members of a patronage board the like rights to attend and vote at the sittings of the diocesan board of patronage at which the persons to be presented are considered and chosen: Sch. 3 para 1 (6). The provisions of Sch. 3 para 1 (7) (see note 8 *supra*) apply to such rights: Sch. 3 para 1 (7).

10 Ibid Sch. 3 para 1 (1) proviso. The Benefices (Exercise of Rights of Presentation) Measure 1931 and any other enactment, Measure or rule of law relating to the presentation or collation of incumbents applies to any presentation or collation under the Pastoral Measure 1968, Sch. 3 para 1: Sch. 3 para 1 (2).

11 Ibid s 19 (4) (b).

12 See *ibid* s 31, and PARA 876 post.

13 Ibid s 21 (1) (a).

14 Ibid ss 21 (1) (b), 38 (e). An alteration cannot be made by order without the vicar's consent: s 38 proviso.

15 Ibid ss 21 (1) (c), 38 (e). This can only be done on a vacancy or with the consent of the rector or vicar concerned: ss 21 (1) (c), 38 (e). Supplementary, consequential and transitional provisions may be made by scheme or, with the vicar's assent (s. 38 proviso), by order including in particular provisions relating to patronage as required by Sch. 3 paras 1 (9), 3 (see ss 21 (1) (f), 38 (e)). Where a pastoral scheme terminates a team ministry it must, so far as practicable and having regard to pastoral considerations, provide for restoring rights of patronage in respect of the benefice concerned to those who would have possessed them if the team ministry had never been established; if and so far as such provision is not practicable the scheme must provide otherwise for the vesting and exercise of the rights of patronage: Sch. 3 para 1 (9). Schedule 3 para 3 makes provision as to parochial church meetings where a team ministry is established: see PARAS 549, 563 et seq, 580, 589 ante, 871 post.

16 Ibid s 21 (2). This is without prejudice to the creation of offices for any benefice created or altered by the scheme: s 21 (2).

UPDATE

870-873 Team and Group Ministries

The Team and Group Ministries Measure 1995 makes further provision with respect to team and group ministries.

870 Constitution of team ministries

TEXT AND NOTES--In the case of a team ministry established for the area of any benefice under a pastoral scheme made and confirmed by Order in Council under the Pastoral Measure 1968 (a 1968 Measure team ministry), the scheme is deemed to contain provisions for the pastoral care of persons in that area by those who are to share the cure of souls therein together with all other persons who are from time to time authorised by licence or permission of the bishop to serve in that area as members of the team: Pastoral Measure 1983 s 20A(1) (s 20A added by Team and Group Ministries Measure 1995 s 2). The persons who are to share the cure of souls in the relevant area

constitute the team chapter, and the team chapter together with the other persons deemed to be referred to in the scheme constitute the team: 1983 Measure s 20A(2). The pastoral committee of each diocese must, as soon as possible after 28 June 1995, send to the secretary of the parochial church council of every parish comprised in the area of a benefice in the diocese for which a 1968 Measure team ministry is established a notice stating that written representations to the effect that the above provisions should not apply to the team ministry may be made to the pastoral committee within the period of six months immediately following the date on which the notice was sent, and require him to affix a copy on or near the principal door of every church in the parish and every building licensed by the bishop for public worship in the parish: *ibid* s 20A(3). The provisions do not apply to any team ministry until the expiration of the period of six months immediately following the date on which the notice was sent to the parishes concerned and if, within that period, written representations with respect to a 1968 Measure team ministry are received by a pastoral committee (1) the pastoral committee must forthwith refer the representations to the Church Commissioners, and the commissioners must then as soon as possible consider the representations and determine whether or not the provisions are to apply to the team ministry; and (2) the provisions do not apply to the team ministry unless and until the commissioners determine that they are to apply to it: 1983 Measure s 20A(4). Where the commissioners have determined under s 20A that the provisions of s 20A(1), (2) are not to apply, a pastoral order may apply those provisions to a 1968 Measure team ministry: 1983 Measure s 37(2), added by Team and Group Ministries Measure 1995 s 5(4).

A pastoral scheme establishing a team ministry or, subject to the scheme, the bishop's licence may assign to any member of the team who is not a member of the team chapter (see) a special responsibility for pastoral care in respect of a part of the area of the benefice, so far as consistent with that member's office: 1983 Measure s 20(8A), added by the Team and Group Ministries Measure 1995 s 1(7). If any such provision is made by the bishop's licence, it may (subject to the scheme) be varied or revoked by a subsequent licence under seal: 1983 Measure s 20(8A).

NOTE 1--Now where two or more benefices are or are to be held in plurality; and words 'the cure of souls in' omitted; Pastoral Measure 1983 s 20(12), referring to *ibid* s 20(7), (8), (11), Sch 3 para 4(1)-(3), (5), (6).

TEXT AND NOTES 2, 3--Now such a scheme must provide (a) for the sharing of the cure of souls in that area by the incumbent of the benefice which, if it is not or would not otherwise be a rectory, is to be a rectory and one or more other ministers who have the title of vicar and a status equal to that of an incumbent of a benefice; and (b) for the pastoral care of persons in that area by those who are to share the cure of souls in it together with all other persons who are from time to time authorised by a provision contained in a licence or permission of the bishop to serve in that area as members of the team. The persons who are to share the cure of souls in the area constitute the team chapter, and the team chapter together with the other person referred to in the scheme by virtue of head (b) constitute the team: 1983 Measure s 20(1), as amended by 1995 Measure s 1(2).

TEXT AND NOTE 4--Replaced. Now, the office of rector in a team ministry may be held by each holder thereof for the specified term of years: 1983 Measure s 20(2), as amended by the 1995 Measure s 1(3). For meaning of 'specified term of years' see 1983 Measure s 20(15), added by the 1995 Measure s 1(12).

NOTE 4--1968 Measure s 19(5) now 1983 Measure s 20(6) (as amended by the 1995 Measure s 1(6)). Where a person is deemed under the Church of England (Miscellaneous Provisions) Measure 1978 s 2(2) (see PARA 654) to be a rector or vicar in a team ministry for a term of years, the restrictions in the Ecclesiastical Offices (Age

Limit) Measure 1975 s 1 (para 654) do not prohibit the extension of the term: 1978 Measure s 2(3).

NOTE 5--Now Pastoral Measure 1983 s 20(2).

TEXT AND NOTE 6--For 'term of years' to 'bishop's licence' read 'the specified term of years': see now 1983 Measure s 20(3), as amended by 1995 Measure s 1(4). For meaning of 'specified term of years' see 1983 Measure s 20(15), added by the 1995 Measure s 1(12). A person ordained to the office of deacon who is authorised (ie by virtue of TEXT AND NOTES 2, 3, head (b)) by licence of the bishop (1) to serve in a team ministry as a member of the team, and (2) for the purposes of the team ministry to perform, so far as consistent with the office of deacon, all such offices and services as may be performed by an incumbent, may serve for the specified number of years: 1983 Measure s 20(3A), added by 1995 Measure s 1(5). The Ecclesiastical Offices (Age Limit) Measure 1975 s 1 (see PARA 664) applies to appointments under the 1983 Measure s 20(3A), with the effect that licences may not be issued in respect of persons over the age of 70 years: see *ibid* s 20(9A), added by the 1995 Measure s 1(9). The specified term may be extended: 1983 Measure s 20(6), amended by the 1995 Measure s 1(6). The deacon has the same security of tenure as an incumbent of a benefice: 1983 Measure s 20(3A) as added. Any other person who is so authorised by licence of the bishop to serve in a team ministry as a member of the team may serve for a term of years specified in the licence provided, subject to exceptions, that he has been nominated for that purpose by the rector with the consent of a majority of the other members of the team and of each parochial church council concerned: 1983 Measure s 20(3B), as added. For meaning of 'specified term of years' see 1983 Measure s 20(15), as added.

NOTE 6--1968 Measure s 19(5) now 1983 Measure s 20(6) (as amended by the 1995 Measure s 1(6)).

NOTES 7, 8--The body or other persons who are entitled to choose a person to be a vicar in the team ministry may not make an offer of appointment to any person until the making of the offer to the person in question has been approved by the parish representatives: 1983 Measure Sch 3 para 2(6)(a), added by 1995 Measure s 6(3). The approval may be deemed to have been given in certain circumstances: Sch 3 para 2(6)(b), as added. Where approval of an offer is refused the body or other persons may request the archbishop of the province in which the benefice in question is to review the matter and if, after review, the archbishop authorises the body or other persons to make the offer in question, that offer may be made accordingly: Sch 3 para 2(6)(d). 'Parish representative' means two lay members of the parochial church council concerned appointed by that council to act as representatives of the council in connection with the selection of vicars in the team ministry: Sch 3 para 2(6)(e).

TEXT AND NOTE 7--Now *ibid* s 20(4) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 4). Where a pastoral scheme designates a person as the first holder of the office of vicar in a team ministry, the bishop must offer to issue a licence appointing him to the office, and if that person does not accept the offer within one month after it is made to him, the designation ceases to have effect: 1983 Measure s 20(5).

NOTE 8--Now the board consists of the bishop as chairman, subject to the 1983 Measure Sch 1 para 2(2), the rector, every vicar in a team ministry, any member of a team to whom s 20(3A) applies, any person having a special responsibility for pastoral care under s 20(8A) with such other member or members as the scheme may provide: Sch 3 para 1(4) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 59(1), (2)). Without prejudice to the generality of Sch 3 para 1(4) the scheme may provide for empowering the bishop to appoint one or more persons, but not exceeding the number

specified in the scheme, to be a member or members of the board for such period as the bishop may specify when making the appointment: *ibid* Sch 3 para 1(5). 1968 Measure Sch 3 para 1(4) now 1983 Measure Sch 3 para 1(6); Patronage (Benefices) Measure 1986 Sch 4 para 25, which requires the representative to be a person who has made the declaration of membership within the meaning of the 1986 Measure (see *ibid* s 8(1); PARA 818A.2). Subject to the 1983 Measure Sch 3 paras 1(7A), (7B), 2(3), (3A), a pastoral scheme by which a patronage board is constituted may provide that any member of the board specified in the scheme is entitled to such number of votes as may be so specified and that where there is an equal division of votes the bishop, as chairman, has a casting vote, but except in so far as the scheme so provides, each member of the board is entitled to one vote: Sch 3 para 1(7) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 59(1), (3)). Every vicar in a team ministry, any member of a team to whom the 1983 Measure s 20(3A) applies and any person having a special responsibility for pastoral care under s 20(8A) are entitled between them to one vote which is to be exercised by such one of them or such two or more of them (acting unanimously or by majority) as may be present at the meeting in question: Sch 3 para 1(7A) (Sch 3 para 1(7A) added by the 1995 Measure s 6(2); 1983 Measure Sch 3 para 1(7A), (7B) substituted for Sch 3 para 1(7A) by the Dioceses, Pastoral and Mission Measure 2007 s 59(1), (4)). Every person referred to in the 1983 Measure Sch 3 para 1(7A) other than a person who wishes to be considered for presentation is entitled to attend at meetings of the diocesan board of patronage at which the person to be presented as rector of the team ministry is considered and chosen and is entitled to vote as provided in that provision: Sch 3 para 1(7B) (as so substituted). 1968 Measure Sch 3 para 1(5) now 1983 Measure Sch 3 para 1(8). Now the right to be a member of the board is, except where such a right is vested in a person in right of his office or only for life or for a term of years, transferable *inter vivos* and on death, but in no case is such a right saleable and may not be deemed to be a right in land: *ibid* Sch 3 para 1(10). 1968 Measure Sch 3 para 1(8) now 1983 Measure Sch 3 para 1(11).

TEXT AND NOTE 9--Now 1983 Measure s 20(4)(a), Sch 3 para 1(1).

NOTE 9--Now if the scheme provides for the patron to be the diocesan board of patronage the scheme must give those persons specified in it rights to attend and vote at meetings of the board at which the person to be presented is considered and chosen, and regard must be had in determining the persons to whom those rights are to be given to the interests of the persons mentioned in 1983 Measure Sch 3 para 1(4) (see NOTE 8), but it is not necessary, in cases where there are pastoral or practical objections, for those persons or all of them to be given those rights: *ibid* Sch 3 para 1(9); Patronage (Benefices) Measure 1986 Sch 4 para 25.

TEXT AND NOTE 10--Replaced; see now 1983 Measure Sch 3 para 1(2); as follows: 1983 Measure Sch 3 para 1(1) does not apply in relation to a benefice of which the bishop is the sole patron, but in that case the pastoral scheme establishing a team ministry for that benefice may provide as mentioned in PARA 1(1), and if the scheme does not so provide, the bishop must choose the rector, other than the first rector, if designated by the scheme, to whom he collates the benefice.

NOTE 10--The 1931 Measure is repealed and the 1968 Measure, Sch 3 para 1(2), as consolidated in the 1983 Measure Sch 3 para 1(3), is amended accordingly: Patronage (Benefices) Measure 1986 Sch 4 para 25. Before the patronage board or the diocesan board of patronage exercise their right of presentation or the bishop exercises his right of collation under these provisions they or he, as the case may be, must consult the other members of the team: 1983 Measure Sch 3 para 1(3).

TEXT AND NOTE 11--Replaced; see now 1983 Measure s 20(4)(b), as follows: the vicar or vicars are chosen in accordance with *ibid* Sch 3 para 2, are appointed to the office by

licence of the bishop under seal and, unless the bishop otherwise directs, are publicly admitted in a church in the area.

A pastoral scheme establishing a team ministry which provides for the presentation of the rector by a patronage board constituted by the scheme or by the diocesan board of patronage may provide for the vicars in that ministry, other than the first holder of any office of vicar therein, if designated by the scheme, to be chosen by the same body: 1983 Measure Sch 3 para 2(1). Where such a scheme so provides, the rector of the team ministry must be a member of the patronage board for the purpose only of meetings at which the person to be appointed a vicar in that ministry is considered and chosen and is entitled to attend and vote at meetings of the diocesan board of patronage for the like purpose: Sch 3 para 2(2) (amended by the 1995 Measure s 6(3); and the Dioceses, Pastoral and Mission Measure 2007 s 59(1), (5)). Every vicar in a team ministry, any member of a team to whom the 1983 Measure s 20(3A) applies and any person having a special responsibility for pastoral care under s 20(8A) are entitled between them to one vote which is to be exercised by such one of them or such two or more of them (acting unanimously or by majority) as may be present at the meeting in question: Sch 3 para 2(3) (Sch 3 para 2(3), (3A) substituted for Sch 3 para 2(3) by the Dioceses, Pastoral and Mission Measure 2007 s 59(1), (6)). Every person referred to in the 1983 Measure Sch 3 para 2(3) other than a person who wishes to be considered for appointment is entitled to attend at meetings of the diocesan board of patronage at which the person to be chosen as vicar in a team ministry is considered and chosen and is entitled to vote as provided in that provision: Sch 3 para 2(3A) (as so substituted). Where such a scheme does not provide as mentioned above, the vicar or vicars in the team ministry, other than the first holder of office of vicar in it, if designated by the scheme, must be chosen by the vicar and the rector jointly: Sch 3 para 2(4). Before the body or other persons who are entitled to choose a person to be a vicar in a team ministry make their choice, they must consult the other members of the team, the parochial church council of every parish belonging to the benefice for the area of which the team ministry was established and if a special cure of souls in respect of a part of the area is to be assigned in accordance with s 20(8)(a) (see PARA 690) to the vicar, any district church council concerned: Sch 3 para 2(5).

NOTE 12--Now 1983 Measure s 31.

TEXT AND NOTES 13-16--Now 1983 Measure ss 22, 37(1)(e) (as renumbered by the 1995 Measure s 5(3); 1983 Measure s 37(1)(e) amended by the Dioceses, Pastoral and Mission Measure 2007 s 58(1)). A pastoral scheme may also: (1) alter a team ministry by providing for the right of presentation of the rector to be transferred to a patronage board constituted by the scheme or to the diocesan board of patronage; (2) alter a team ministry by providing for the vicars therein to be chosen by the body entitled to present the rector (see TEXT AND NOTE 11); and (3) specify the term of years (for which certain members of a team are to hold office or serve) for the purposes of the 1983 Measure s 20(2), (3), (3A): s 22(1)(bb), (bbb), (cc), added by 1995 Measure s 3(2). 'Specified term of years' has the same meaning as in the 1983 Measure s 20(15): *ibid* s 22(3), as added by the 1995 Measure s 3(3). The 1983 Measure Sch 3 para 1 applies in part in relation to a pastoral scheme or order altering a team ministry under s 22(1)(bb) and 37(1)(e)(v) (as renumbered): Sch 3 para 1(13), added by the 1995 Measure s 6(2)(c).

TEXT AND NOTE 15--Replaced. Now a pastoral scheme may, with the consent of the rector concerned, change the office of a rector in a team ministry from a freehold office to an office held for the specified term of years or alter the term of years for which an office of rector or vicar in a team ministry is held to accord with the specified term of years: 1983 Measure s 22(1)(c), substituted by the 1995 Measure s 3(2)(b). For meaning of

'specified term of years' see the 1983 Measure s 20(15), added by the 1995 Measure s 1(12).

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871. Organisation of team ministries.

The rector and vicars¹ must meet as a chapter to discuss and reach a common mind on all matters of general concern or special interest to the team ministry². A pastoral scheme establishing a team or group ministry³ may provide, or authorise the bishop by instrument under his hand with the concurrence of all the members of the ministry to provide, for establishing a group council comprising all the members of that ministry and lay representatives of each of the parochial church councils in the area, as may be specified in the scheme, to consult together on matters of common concern⁴.

Such a scheme may also provide or authorise the bishop by instrument under his hand with the rector's concurrence to provide for the election, by the annual church meeting of the parishes in the area, of a district church council for any district in the parish in which a church⁵ or place of worship⁶ is situated and of deputy churchwardens for it⁷, for the assignment to them of such of the functions of the parochial church council and churchwardens of the parish, in relation to the church, place of worship or district, as may be specified⁸, for a vicar in the team to be chairman of the district church council, and for that council's constitution, meetings and procedure⁹.

1 For the relationship between the rector and vicars in a team ministry and their respective duties, see the Pastoral Measure 1968, s 19 (6), (7), and PARAS 690, 691 ante. The Ecclesiastical Jurisdiction Measure 1963 applies to such vicars as if they were incumbents of the benefice of the area in which the team ministry is established: Pastoral Measure 1968, s 19 (8).

2 Ibid s 19 (9). The rector must convene regular chapter meetings and preside when present, and in his absence a vicar appointed by him as deputy chairman presides: s 19 (9). The scheme, or the bishop's licence to any team vicar, may also assign to any such vicar the duties, or a share in them, of the chairmanship of the annual parochial church meeting (see PARA 563 ante) and the parochial team ministry is established: s 19 (10), Sch. 3 para 3 (1). Provision may also be made concerning other duties of the minister of the parish under the Church Representation Rules, contained in the Synodical Government Measure 1969, Sch. 3: Pastoral Measure 1968, s 19 (10), Sch. 3 para 3 (1). If the duties of chairmanship are to be shared, the arrangements must be such that the chairman on any occasion is determined in advance: Sch. 3 para 3 (1) proviso.

3 As to group ministries, see PARA 872 post.

4 Ibid Sch. 3 para 3 (4) (a). The scheme or bishop may at the same time provide for the election of lay representatives by those councils and for the chairmanship, meetings and proceedings of the group council: Sch. 3 para 3 (4) (b), (c). In relation to a group council so established, the Church Representation Rules have effect subject to the scheme or instrument: r 17.

5 For the meaning of 'church', see PARA 865 note 1 ante.

6 For the meaning of 'place of worship', see the Pastoral Measure 1968, Sch. 3 para 3 (2), and PARA 549 note 3 ante.

7 Ibid Sch. 3 para 3 (2) (a).

8 Ibid Sch. 3 para 3 (2) (b).

9 Ibid Sch. 3 para 3 (2) (c).

UPDATE

870-873 Team and Group Ministries

The Team and Group Ministries Measure 1995 makes further provision with respect to team and group ministries.

871 Organisation of team ministries

TEXT AND NOTES--Where a benefice for which a team ministry is established becomes vacant the bishop may appoint a person holding the office of vicar in a team ministry to act as rector in the team ministry for the purposes of the Pastoral Measure 1983 s 20(3B) (see PARA 870), (7) and (10) (see TEXT AND NOTE 2), and any person so appointed is deemed to hold the office of rector in the team ministry for those purposes while the benefice remains vacant: s 20(14), added by the Team and Group Ministries Measure 1995 s 1(12).

The General Synod may by canon empower the bishop of a diocese, in the case of a benefice in his diocese in respect of which a team ministry is established: (1) to grant licences to deaconesses, readers, licensed lay workers and other lay persons to serve in the area of the benefice for a term of years specified in the licence; and (2) to revoke the licence summarily and without further process before the expiration of the specified term for such cause and subject to such conditions as the canon provides: Deaconesses and Lay Ministry Measure 1972 s 1A, added by the Team and Group Ministries Measure 1995 s 13. This is without prejudice to the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7(1) (see PARA 702): 1972 Measure s 1A, as added.

NOTE 1--Now Pastoral Measure 1983 s 20(7), (8), (9). The 1963 Measure similarly applies to deacons in a team ministry to whom the 1983 Measure s 20(3A) (see PARA 870) applies: 1983 Measure s 20(9), as amended by the 1995 Measure s 1(8).

TEXT AND NOTE 2--Now the rector in a team ministry must convene meetings of the team at regular intervals for the purpose of discussing and reaching a common mind on all matters of general concern or special interest to the team ministry and unless a pastoral scheme otherwise provides, the rector must preside, except that if he requests otherwise or is absent a deputy appointed by the meeting must preside: 1983 Measure s 20(10), amended by 1995 Measure s 1(10). Any member of the team in a team ministry may, by notice in writing, request the rector to convene a team meeting to be held within the period of 28 days following the service of the notice; and, if the rector fails to comply with such a request, that member may himself convene the meeting: 1983 Measure s 20(10A), as added by 1995 Measure s 1(11). 1968 Measure Sch 3 para 3(1) now 1983 Measure Sch 3 para 4(1).

TEXT AND NOTES 4-9--Now where a pastoral scheme establishes a team ministry for the area of a benefice which comprises a parish in which there are two or more churches or places of worship, the scheme may make provision, or authorise the bishop by instrument under his hand with the concurrence of the rector to make provision (a) for ensuring due representation of the congregation of each such church or place on the parochial church council of the parish; (b) for the election of a district church council for any district in the parish in which such church or place is situated and for the constitution, chairmanship and procedure of that council; (c) for the functions of the parochial church council of the parish which must or may be delegated to the district church council; (d) for the election or choice of deputy churchwardens for such church or place and for the functions of churchwardens of the parish which must or may be delegated to the deputy churchwardens, being provisions to the same effect as those which may be made by a scheme under the Church Representation Rules in the like case: 1983 Measure Sch 3 para 4(2).

Where a pastoral scheme establishes a team ministry for the area of a benefice which comprises more than one parish, the scheme may make provision, or authorise the bishop by instrument under his hand with the concurrence of the rector to make provision (a) for the establishment of a team council; (b) for the chairmanship, meetings and procedure of the team council; and (c) subject to the Patronage (Benefices) Measure 1986 Sch 2 para 19 (see PARA 818A.14), for the function of the parochial church council of each parish in the area which must or may be delegated to the team council, being provisions to the same effect as those which may be made by a scheme under the Church Representation Rules in the like case: 1983 Measure Sch 3 para 4(3); 1986 Measure Sch 4 para 25.

Any provisions included in a pastoral scheme or the bishop's instrument by virtue of the above provisions cease to have effect at the expiration of such period as may be specified in the scheme or instrument, as the case may be, being a period which does not exceed five years from the date of the establishment of the team ministry to which the pastoral scheme or instrument of the bishop relates, and that period may not be extended or renewed by a subsequent scheme or instrument: 1983 Measure Sch 3 para 4(5). As to period of validity of provisions included in a scheme or instrument by virtue of *ibid* Sch 3 para 4(2) or (4) as originally enacted, see Sch 3 para 4(6).

Where the rector in a team ministry established for any benefice receives a statutory notice concerning ecclesiastical property in the benefice, he must (1) keep every member of the team informed of matters arising from the notice, (2) afford every member of the team an opportunity to express views thereon before taking any action in response to the notice, and (3) have regard to those views before taking any such action: 1983 Measure s 20(13), added by 1995 Measure s 1(12). For meaning of 'ecclesiastical land' and 'statutory notice' see 1983 Measure s 20(16), as added.

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872. Group ministries.

A pastoral scheme may provide for establishing a group ministry for a specified group of benefices¹. Each of the incumbents has authority to perform offices and services in each of the benefices². It is the duty of all the incumbents to assist each other so as to make the best possible provision for the cure of souls throughout the area of the group ministry³. The pastoral scheme may designate the first person (who may be the existing incumbent) to hold any benefice as a benefice in the group but otherwise he is presented or collated to the benefice by the patron⁴.

The incumbents must meet as a chapter for the purpose of discussing and reaching a common mind on all matters of general concern or special interest to the group ministry⁵. The rights and duties⁶ of each incumbent in a group ministry attach to his office and, so long as the group continues and the benefice is included in it, the incumbent may not resign or withdraw from those rights and duties, except by resigning the benefice⁷. On a vacancy the new incumbent is admitted to the benefice as an office in the group ministry, with its rights and subject to its duties⁷.

The scheme may provide for establishing a group council comprising all the incumbents and lay representatives of each of the parochial church councils in the area⁸. All the incumbents of a group ministry are entitled to attend the parochial church meetings and parochial church council meetings of all the parishes in the area of the group ministry⁹.

A pastoral scheme may terminate a group ministry by abolishing the rights and duties¹⁰ attaching to the benefices in the group¹¹ or alter it by reducing, increasing or changing the benefices in the group¹², and may make supplementary, consequential and transitional provisions¹³.

1 Pastoral Measure 1968, s 20 (1). A pastoral scheme making provision for establishing a group ministry for benefices from two or more dioceses must make such transfers of benefices from one diocese to another as may be necessary to bring the whole group within the diocese designated by the scheme: s 35 (4). A scheme may include in a group ministry a benefice for which a team ministry is established, in which case s 20, Sch. 3 paras 2, 3 (4), (5), apply to all the vicars in the team ministry, as well as the rector, as they apply to the incumbents of the other benefices in the group except that directions to those incumbents in respect of their ministry in the area of the benefice for which the team ministry is established are to be given only by the rector: s 20 (6).

2 Ibid s 20 (1) (a). An incumbent performing offices and services in the area of another benefice must act in accordance with the directions of the incumbent of the other benefice: s 20 (1) (b).

3 Ibid s 20 (1) (c).

4 Ibid s 20 (3). For the meaning of 'patron', see PARA 813 note 5 ante. The patron must obtain the bishop's approval, to be given only after consultation with the other incumbents in the group, of the person to be presented: s 20 (3), Sch. 3 para 2 (1). For the meaning of 'bishop', see PARA 813 note 3 ante. If the approval is withheld the patron may bring the decision before the archbishop of the province for review and may lawfully present the person concerned if the archbishop authorises him to do so: Sch. 3 para 2 (1) proviso. Time does not run for the purposes of lapse (see PARA 826 et seq ante) whilst the bishop's decision is under review: Sch. 3 para 2 (2). Where the patron of any such benefice is required to obtain the bishop's approval or the archbishop's authorisation under the Benefices (Exercise of Rights of Presentation) Measure 1931, s 3 (see PARA 818 ante), the requirements of s 3 as well as of the Pastoral Measure 1968, Sch. 3 para 2, must be complied with: Sch. 3 para 2 (3).

5 Ibid s 20 (4). Unless the scheme provides for a chairman the members elect a chairman, normally for three years; he must convene regular chapter meetings and preside when present, and in his absence a deputy appointed by the meeting presides: s 20 (4).

6 Ibid under ibid s 20 (1).

7 Ibid s 20 (2).

8 Ibid s 20 (5), applying Sch. 3 para 3 (4), for which see PARA 871 ante.

9 Ibid s 20 (5), Sch. 3 para 3 (5).

10 Ibid the rights and duties attaching under ibid s 20.

11 Ibid s 21 (1) (d).

12 Ibid s 21 (1) (e).

13 Ibid s 21 (1) (f): cf. para 870 note 15 ante.

UPDATE

870-873 Team and Group Ministries

The Team and Group Ministries Measure 1995 makes further provision with respect to team and group ministries.

872 Group ministries

NOTE 1--Now Pastoral Measure 1983 ss 21(1), 35(4). Reference to provisions of Sch 3 omitted: s 21(6).

NOTES 2, 3--Now ibid s 21(1). In s 21, except s 21(2), (3), 'incumbent' includes a priest in charge: s 21(7).

NOTE 2--A woman who is the incumbent of a benefice does not by virtue of s 21(1)(a) (authority of each incumbent to perform offices and services in each of the benefices in a group ministry) have authority to preside at or celebrate the Holy Communion or pronounce the Absolution in a parish to which a resolution in the form prescribed in the Priests (Ordination of Women) Measure 1993 s 3(1) (see PARA 657B.2) applies: 1983 Measure s 21(1); 1993 Measure Sch 3 para 7.

NOTE 4--Section 20(3) now 1983 Measure s 21(3) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 4). Schedule 3 para 2 now ibid Sch 3 para 3; Patronage (Benefices) Measure 1986 Sch 4 para 25, which provides that where a group ministry is established by a pastoral scheme for a group of benefices, the registered patron of a benefice in the group must consult the other incumbents and any priests in charge in the group before he makes a request under the 1986 Measure s 13 (see PARA 818A.7) for the approval of the parish representatives (as defined in s 11(7); para 818A.5), and of the bishop (unless the registered patron is the bishop), to the making to a priest of an offer to present him to the benefice. 'Registered patron', in relation to a benefice or to benefices held in plurality, means every person who is for the time being registered under the 1986 Measure in a register of patrons as a patron of that benefice or those benefices: 1983 Measure s 87(1); 1986 Measure Sch 4 para 24. As to the registration of patrons, see ibid s 1 (para 783A.1).

NOTE 5--Now 1983 Measure s 21(4).

NOTES 6, 7--Now ibid s 21(1), (2).

TEXT AND NOTES 8, 9--Now *ibid* s 21(5), under which *ibid* Sch 3 para 4(4) applies for the establishment of group councils and for conferring certain powers on such a council.

Where a pastoral scheme establishes a group ministry, the scheme may make provision, or authorise the bishop by instrument under his hand with the concurrence of all the members of the group to make provision (a) for the establishment of a group council; (b) for the chairmanship, meetings and procedure of the group council; and (c) for the functions of the parochial church council of each parish in the area for which the group ministry is established which must or may be delegated to the group council, being provision to the same effect as those which may be made by a scheme under the Church Representation Rules in the like case: 1983 Measure Sch 3 para 4(4).

NOTES 11-13--Now *ibid* s 22(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(ii) Functions of Diocesan Pastoral Committees/B. TEAM AND GROUP MINISTRIES/873. Assistants.

873. Assistants.

A pastoral scheme may provide in relation to any benefice for (1) the employment of one or more assistant curates¹ or for the provision of assistance by other clergymen²; (2) placing an area or district under the special care of an assistant curate³; and (3) the employment of deaconesses, readers or other lay workers⁴. Provision may be made by pastoral order with respect to the employment and remuneration of assistant curates and other persons providing clerical or lay assistance under this power⁵.

1 As to assistant curates, see PARA 706 et seq ante.

2 Pastoral Measure 1968, s 26 (a).

3 Ibid s 26 (b).

4 Ibid s 26 (c). As to deaconesses, see PARA 759 et seq ante; as to readers, see PARA 762 et seq ante; and as to licensed lay workers, see PARA 766 ante.

5 Ibid s 38 (g).

UPDATE

870-873 Team and Group Ministries

The Team and Group Ministries Measure 1995 makes further provision with respect to team and group ministries.

873 Assistants

TEXT AND NOTES--Repealed: Pastoral (Amendment) Measure 1982 ss 19, 28(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(ii) Functions of Diocesan Pastoral Committees/C. ANCILLARY POWERS AND MATTERS/874. Endowments.

C. ANCILLARY POWERS AND MATTERS

874. Endowments.

A pastoral scheme may provide for the transfer or appropriation of the whole or a part of the endowments¹ of any benefice, whether existing or to be created, (1) to another benefice, so as to become the endowments of that benefice²; or (2) in the case of glebe land or a glebe house, to the diocesan board of finance³, or for providing a residence for a vicar in a team ministry or an assistant curate⁴; (3) to the capital account of the diocesan stipends fund⁵ or, if the endowment is a periodic payment, to its income account⁶. If the scheme would otherwise have provided that any endowments be transferred or appropriated to a benefice held by the provost of a parish church cathedral⁷ it must provide instead that they go to the cathedral chapter or that a periodical payment become part of the capitular revenue of the cathedral⁸.

A pastoral scheme or order may also provide that the whole, or a specified annual amount, or the excess over a specified amount⁹, of the endowments of a benefice be paid to the income account of the diocesan stipends fund¹⁰.

These powers with respect to the endowments or the income from them of any benefice (not being one which ceases to exist by virtue of the scheme) may only be exercised (1) where the provision is to take effect during or on the occurrence of a vacancy in the benefice¹¹; or (2) where the incumbent consent¹²; or (3) where the income of the endowments, disregarding any gift or bequest made during the existing incumbency, is not to be reduced below its amount when the incumbent was admitted¹³; or (4) where the benefice is to be held in plurality and the provision will only operate during the continuance of the plurality¹⁴. In every case the Church Commissioners must satisfy themselves that the income of the endowments of the benefice or, in the fourth case, the aggregate of the income of the endowments of the benefices, will be adequate¹⁵. These provisions apply also, as far as may be, to the endowments of an archdeaconry as they apply to the endowments of a benefice¹⁶.

1 'Endowments' in relation to a benefice (defined in PARA 768 note 1 ante) does not include a church (defined in PARA 865 note 1 ante), churchyard, parsonage house (defined in PARA 814 note 5 ante) or right of patronage (defined in PARA 813 note 5 ante), but, subject to that, any question of what constitutes the endowments or the income of the endowments is to be conclusively determined by the Church Commissioners, who may include income arising from a parsonage house: Pastoral Measure 1968, s 90 (1).

2 Ibid s 33 (1) (a). In the application of this provision to the endowments of an archdeaconry this power is a power to transfer the endowments to another archdeaconry: s 33 (10).

3 Ibid s 33 (1) (b). The board must dispose of it in accordance with Sch. 3 para 9 (see PARA 886 post): s 33 (1) (b).

4 Ibid s 33 (1) (b). As to team ministries, see PARA 870 et seq ante; as to assistant curates, see PARA 706 et seq ante.

5 As to this fund, see PARA 1235 post.

6 Pastoral Measure 1968, s 33 (1) (c).

7 For the meaning of 'parish church cathedral', see PARA 619 note 1 ante: ibid s 33 (1) proviso.

8 Ibid s 33 (1) proviso.

9 In this case, unless the scheme otherwise provides, any gift or bequest received, or any grant made by the Church Commissioners, after the confirmation of the scheme is to be disregarded in calculating the income of the endowments: s 33 (2) proviso.

10 Ibid s 33 (2). Where two or more benefices are held in plurality or are to be so held by virtue of the scheme, they may be treated for the purpose of s 33 (2) as one and the aggregate of the income of their endowments may be treated for this purpose as the endowment income of that one benefice: s 33 (2). The commissioners may, with the consent of the bishop and the diocesan board of finance, revoke or vary any provision made under s 33 (2) so as to reduce the amount of any income payable: s 33 (4).

11 Ibid s 33 (3) (a).

12 Ibid s 33 (3) (b).

13 Ibid s 33 (3) (c).

14 Ibid s 33 (3) (d).

15 Ibid s 33 (3).

16 Ibid s 33 (10). For a specific modification, see note 2 supra.

UPDATE

874 Endowments

TEXT AND NOTES 1-8--Repealed: Endowments and Glebe Measure 1976 Sch 8. As to extinguishment of trusts see *ibid* s 11 (see PARA 1240B).

NOTE 9--Repealed: *ibid* Sch 8.

TEXT AND NOTE 10--This should read: 'a pastoral scheme or order may also provide that the whole or a specified annual amount, or the excess over a specified amount, of the income of the endowments of a benefice...': Pastoral Measure 1983 ss 33(1), 37(1)(k) (as renumbered by the Team and Group Ministries Measure 1995 s 5). 1968 Measure s 33(4) now 1983 Measure s 33(3).

TEXT AND NOTES 11-14--Now *ibid* s 33(2); these powers exist with respect only to the income of the endowments of any benefice (not being one which ceases to exist by virtue of the scheme).

TEXT AND NOTE 13--Head (3) now as follows: where the aggregate of the income derived from the following sources, namely, the income of the endowments of the benefice (disregarding any gift or bequest made during the existing incumbency), any guaranteed annuity payable in respect of the benefice under the Endowments and Glebe Measure 1976 and any personal grant to which the incumbent of the benefice is entitled under the 1976 Measure, is not to be reduced below the amount thereof when the incumbent was admitted: 1983 Measure s 33(2)(c).

TEXT AND NOTE 15--Now in every case the commissioners must satisfy themselves that the income derived from the sources mentioned in head (3) is sufficient to support the incumbent: 1983 Measure s 33(2).

TEXT AND NOTE 16--Repealed: Endowments and Glebe Measure 1976 Sch 8.

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875. Remuneration.

A pastoral scheme may charge the income account of the diocesan stipends fund with the payment to the incumbent of any benefice of such stipend as may be specified¹. Further, the scheme, or a pastoral order, may charge that account with the payment of such periodic sums, up to a maximum specified amount, as may be approved from time to time by the bishop, to such person or body as he may appoint, in respect of the stipend of any vicar in a team ministry or assistant curate, or the remuneration of any other person providing clerical or lay assistance in respect of a benefice².

Any previously created charge³ on the endowment income of a benefice which forms the sole endowment, or part of the endowments, of another benefice may be extinguished by a pastoral scheme⁴.

These provisions apply also, so far as applicable to the endowments of an archdeaconry as they apply to the endowments of a benefice⁵.

1 Pastoral Measure 1968, s 33 (6).

2 Ibid ss 33 (7), 38 (1). The provisions which may be made under s 33 (1)-(8) in respect of the endowments or endowment income of a benefice may be made by a pastoral scheme or order in respect of any endowments or endowment income held in trust for the use or remuneration of any assistant curate of a benefice, and such endowments may be converted into the endowments of a benefice: ss 33 (9), 38 (1). For the meaning of 'endowments', see PARA 874 note 1 ante.

3 Ie any charge created before the commencement of the Pastoral Measure 1968 on 1st April 1969, including one created by or under any other Act or Measure: ibid s 33 (8).

4 Ibid s 33 (8).

5 Ibid s 33 (10).

UPDATE

875 Remuneration

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(ii) Functions of Diocesan Pastoral Committees/C. ANCILLARY POWERS AND MATTERS/876. Parsonage houses and other buildings.

876. Parsonage houses and other buildings.

A pastoral scheme or order¹ may provide for any of the following matters: (1) the designation of the place of residence of the incumbent of a benefice² created or affected by the scheme, the incumbent of any benefices to be held in plurality by virtue of the scheme, any vicar in a team ministry established for any benefice by the scheme or any assistant curate employed in any of the afore-mentioned benefices³; (2) the provision by purchase or otherwise, or the improvement or repair, of a house for an incumbent, vicar in a team ministry, assistant curate or lay worker and for the vesting of any house so provided⁴; (3) the transfer of a parsonage house⁵ to the incumbent of any benefice as his residence or to the diocesan board of finance⁶; (4) the complete or partial demolition of a parsonage house and the disposal of the materials obtained from it, and the determination of the persons to carry out the demolition and bear the expense⁷; (5) the transfer of the site of any demolished parsonage house to the diocesan board of finance for disposal or for use for diocesan or parochial purposes⁸; and (6) the division of a parsonage house into two or more parts⁹.

¹ See the Pastoral Measure 1968, s 38 (i), which provides that any power exercisable under this section may be exercisable by an order, except in respect of a new benefice.

² For the meaning of 'benefice', see PARA 768 note 1 ante.

³ Pastoral Measure 1968, s 31 (1) (a). The power to designate a place of residence is construed as one either to designate a particular house or a locality; and the designation of a particular house is without prejudice to the subsequent exercise of any power to dispose of it: s 31 (2). As to the right of the diocesan board of finance to take proceedings to recover possession of the parsonage house where any provision of a pastoral scheme may vacate a benefice or dissolve one not already vacant, see s 24 (4), and PARA 882 post.

⁴ Ibid s 31 (1) (b). As to the diocesan synod's power to authorise improvements by this section, see the Repair of Benefice Buildings Measure 1972, s 15 (1) (b), and PARA 1176 post.

⁵ For the meaning of 'parsonage house', see PARA 814 note 5 ante.

⁶ Pastoral Measure 1968, s 31 (1) (c). The board must dispose of it in accordance with Sch. 3 para 9 (see PARA 886 post), or arrange for its use as a residence for a vicar in a team ministry, a minister of an extra-parochial place or an assistant curate, or for other parochial or diocesan purposes: s 31 (1) (c). There is power to exclude from the transfer to the board any land held with the house: s 31 (3).

⁷ Ibid s 31 (1) (d).

⁸ Ibid s 31 (1) (e). The board must dispose of the site in accordance with s 31 (1) (c) (see note 6 supra). Any part of the site may be excluded from the transfer to the board: s 31 (3).

⁹ Ibid s 31 (1) (f). As to the authorisation by a pastoral scheme of sharing agreements in respect of parsonage houses, see the Sharing of Church Buildings Measure 1970, s 1 (1) (b), (c), and PARA 865 text and note 6 ante. As to sharing agreements generally, see PARA 1186 post. The Sharing of Church Buildings Act 1969, s 7 (3), provides that such an agreement may not be made with respect to an existing residence house of a benefice of the Church of England unless authority to make an agreement on behalf of that church is given by a scheme under the Pastoral Measure 1968, as extended by a subsequent Measure (ie the Sharing of Church Buildings Measure 1970: see supra).

UPDATE

876 Parsonage houses and other buildings

TEXT AND NOTES--1968 Measure, as amended, consolidated in Pastoral Measure 1983; see s 31 as follows.

A pastoral scheme or order (see 1983 Measure s 37(1)(h) (as renumbered by the Team and Group Ministries Measure 1995 s 5)). may provide for any of the following matters: (1) the designation of any house belonging to a benefice as the place of residence of the incumbent of any benefice created or affected by the scheme or of the incumbent of any benefices to be held in plurality by virtue of the scheme; (2) the designation of any house as the place of residence of any vicar in a team ministry established for the area of any benefice by the scheme; (3) the transfer to the incumbent of any benefice as his official residence, or as a site therefor, of a parsonage house, part of a parsonage house, a house situated on diocesan glebe land, any parsonage land or any diocesan glebe land; (4) the transfer of a parsonage house, part of a parsonage house or any parsonage land to the Diocesan Board of Finance to be held by the Board as part of the diocesan glebe land of the diocese or for disposal in accordance with *ibid* Sch 3 para 9 (see PARA 886) or for use for parochial or diocesan purposes: *ibid* s 31(1).

The power under head (1) or (2) to designate a house as the place of residence of an incumbent or a vicar in a team ministry is without prejudice to the subsequent exercise of any power to dispose of the house or to the subsequent exercise by the bishop of any power he may have to give directions as to the place where the incumbent or vicar is to reside: 1983 Measure s 31(2).

Where in exercise of the power under head (4) a parsonage house or part of one is to be transferred to the Diocesan Board of Finance, but any land held with that house is not to be so transferred, the pastoral scheme which provides for the transfer may also provide that the land is to be deemed to be parsonage land for the purposes of the Endowments and Glebe Measure 1976: 1983 Measure s 31(3).

In the above provisions, 'diocesan glebe land' and 'parsonage land' have the same meanings as in the 1976 Measure: 1983 Measure s 31(4).

A diocesan board of finance may sell a parsonage house transferred to it pursuant to s 31(1) for use for diocesan purposes and use the proceeds of sale for diocesan purposes: *Barnes v Derby Diocesan Board of Finance* [2002] EWHC 2940 (Ch), [2003] Ch 239.

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877. Supplementary provisions: commencement.

A pastoral scheme or order may contain such supplementary or consequential provisions as appear to the Church Commissioners and the bishop or bishops concerned to be necessary or expedient for giving effect to the purposes of the scheme or order¹.

A scheme or order may also provide that it, or any of its provisions, come into operation on a specified date or on the happening of a specified event or contingency, and different dates, events or contingencies may be specified for different provisions².

1 Pastoral Measure 1968, s 39 (1). It may also, if the commissioners consider it appropriate, have annexed to it a map or plan showing the changes made: s 39 (2). Schedule 3 has effect without prejudice to the powers contained in s 39 (1).

2 Ibid s 39 (3).

UPDATE

877 Supplementary provisions: commencement

NOTES 1, 2--Now Pastoral Measure 1983 s 38(2), (3).

TEXT AND NOTE 1--Now as appear to the commissioners with the agreement of the bishop or bishops concerned given after consultation with any pastoral committee (including a joint pastoral committee) concerned to be necessary or expedient: Pastoral Measure 1983 s 38(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(iv) Preparation and making of Pastoral Scheme or Order/A. PREPARATION AND SUBMISSION OF PASTORAL SCHEME OR ORDER/878. Procedure.

(iv) Preparation and making of Pastoral Scheme or Order

A. PREPARATION AND SUBMISSION OF PASTORAL SCHEME OR ORDER

878. Procedure.

If the bishop¹ approves the draft proposals formulated by the pastoral committee², either with or without amendments³, he submits them to the Church Commissioners, who then send copies to the interested parties⁴ informing them of their right to make representations if draft schemes or orders are made⁵. The commissioners must consider the proposals and, with the bishop's agreement given after consultation with the pastoral committee, may make such amendments as appear to them desirable⁶, and if the proposals provide for a declaration of redundancy⁷, and also provide⁸ for the demolition of the church or for its being put to use involving architectural or structural changes in it, the commissioners must consult the Advisory Board for Redundant Churches⁹.

The commissioners must then prepare a draft pastoral scheme or order¹⁰, and must serve a copy on each of the interested parties¹¹ together with a notice stating that written representations may be made to the commissioners not later than a specified date being not less than twenty-eight days after service of the notice¹². If a draft scheme provides for a declaration of redundancy the commissioners must also serve a copy on the Advisory Board for Redundant Churches¹³ and publish notice of it in one or more newspapers circulating in the locality affected¹⁴, and a similar notice must also be published if the scheme makes provisions¹⁵ relating to the churchyards and burial grounds not annexed to a redundant church¹⁶. The commissioners may extend any period for making representations, either before or after that period expires¹⁷.

The commissioners must consider any representations duly made to them and may, if they think fit, afford any person an opportunity of making oral representations to their representative¹⁸. With the agreement of the bishop given after consultation with the pastoral committee the commissioners may amend the draft scheme or order, either as a result of representations or otherwise¹⁹, but notice must be given of an amended draft scheme or order as in the case of an original draft scheme or order²⁰.

If, having considered any representations, the commissioners are of opinion that the draft scheme or order should be made and do not propose to make any or any further amendments, they must (1) in the case of a draft scheme, submit it to the bishop for his consent and then seal a copy and submit the scheme so made for confirmation by Her Majesty in Council²¹; or (2) in the case of a draft order, seal a copy and submit it to the bishop, who makes the order by sealing it²².

1 For the meaning of 'bishop', see PARA 813 note 3 ante.

2 See PARA 862 ante. As to representations, consultations, interviews and inquiries, see the Pastoral Measure 1968, s 15 (2), and PARA 861 ante.

3 For the bishop's power to formulate and submit proposals on certain matters, see *ibid* s 13 (5), and PARA 538 ante. As to proposals by him for the holding of two or more benefices in plurality, see s 13 (1), and PARA 853 ante.

4 For the meaning of 'interested parties', see PARA 862 note 2 ante. In the case of a parochial church council, two copies of any document must be sent so that one may be exhibited to the public: *ibid* s 83 (2).

5 *Ibid* s 3 (6). The bishop must also send to the commissioners any annexe containing comments and information furnished by the Council for Places of Worship: s 3 (6).

6 *Ibid* s 4 (1). These include any amendments which may seem to them necessary for the purpose of correcting any drafting mistake or omission: s 15 (1). Such amendments may be made without reference to any person: s 15 (1).

7 As to declarations of redundancy, see PARA 1119 et seq post.

8 *Ie* in the circumstances mentioned in the Pastoral Measure 1968, s 46 or s 47: see PARA 1120 post.

9 *Ibid* s 4 (2). As to this board, see PARA 1135 post.

10 *Ibid* s 4 (3). It must appear to them that the implementing of the proposals would be within the powers exercisable under Part II (ss. 16-41) (other than s 36, for which see PARA 457 ante) or Part III (ss. 42-66) by pastoral scheme or order: s 4 (3). If any of the powers concerned are exercisable only by scheme they must prepare a draft scheme (s. 4 (3) (a)), or if all the proposals can be implemented by the exercise of powers mentioned in s 38 (see PARA 860 ante) under a pastoral order they must prepare a draft order (s. 4 (3) (b)). If some but not all the proposals could be so implemented they may prepare a draft order for those proposals and a draft scheme for the others: s 4 (3) proviso (ii). With the bishop's agreement given after consultation with the pastoral committee, the commissioners may decide to proceed with some only of the proposals and then they proceed as if they were the only proposals: s 4 (3) proviso (i).

11 See note 3 *supra*.

12 Pastoral Measure 1968, s 5 (1). The commissioners must send the secretary of the parochial church council of any parish affected by a draft scheme copies of a notice stating the objects of the draft scheme, naming a place locally where a copy may be inspected, and stating that written representations may be made to the commissioners not later than a specified date being not less than twenty-eight days after the sending of the notice: s 5 (3). The secretary must be required to affix a copy on or near the principal door of the parish church or each of the parish churches and of any other church in the parish to which a proposed declaration of redundancy relates: s 5 (3).

13 *Ibid* s 5 (2) (a).

14 *Ibid* s 5 (2) (b). The notice is similar to that mentioned in note 12 *supra*, save that the twenty-eight days dates from the first publication of the notice: s 5 (2) (b).

15 *Ie* provision for any of the matters mentioned in *ibid* s 30, for which see PARA 1074 post.

16 *Ibid* s 5 (2).

17 *Ibid* s 5 (5).

18 *Ibid* s 5 (4). See also s 15 (2), and PARA 861 ante.

19 *Ibid* s 6 (1).

20 *Ibid* s 6 (2).

21 *Ibid* s 7 (a). As to confirmation, see PARA 880 post.

22 *Ibid* s 7 (b). As soon as possible after the order is made a notice must be published in the London Gazette sufficiently identifying it and stating that it has been made and where a copy may be obtained: s 9 (1). The commissioners must send a copy of the order to the interested parties (s. 9 (2)), and to the registrar of the diocese concerned, who must file it in the diocesan registry (s. 9 (3)). The validity of an order so notified may not be questioned in any legal proceedings: s 10 (1). Except as specified in the order, the order comes into operation on the date on which notice of it is gazetted: s 10 (2).

UPDATE

878 Procedure

TEXT AND NOTES--The 1983 Measure s 5 is substituted and ss 6, 7, 8, 10, 16 are amended in relation to pastoral schemes which do not contain a declaration of closure of a church for regular public worship and to pastoral orders by the Dioceses, Pastoral and Mission Measure 2007 ss 23(1), (3), 24, 27, 28, 31, 34. The 1983 Measure ss 5, 6, 10 are amended in relation to pastoral church buildings schemes by the 2007 Measure ss 23(4), 35, 37, 38, 39.

TEXT AND NOTES 1-5--See now Pastoral Measure, 1983 s 4 (see PARA 862). 1968 Measure s 83(2) repealed: Pastoral (Amendment) Measure 1982 s 59.

NOTE 3--1968 Measure s 13(5) repealed: 1982 Measure s 12(3). Proposals by the bishop no longer restricted to proposals for holding benefices in plurality; see Pastoral Measure 1983 s 14(1) (see PARA 854).

TEXT AND NOTE 6--Now the commissioners must consider the proposals and the bishop, in consultation with the pastoral committee, must consider any comments made by the commissioners with respect to any of the proposals: 1983 Measure s 5(1).

NOTE 6--1968 Measure s 15, now 1983 Measure s 16.

TEXT AND NOTE 9--The commissioners must also consult the Advisory Board if the proposals also provide for the care and maintenance of the church by the Churches Conservation Trust (see PARA 1137): *ibid* s 5(2).

After the provisions of 1983 Measure s 5(1), (2) have been complied with the commissioners may make, with the agreement of the bishop given after consultation with the pastoral committee, such amendments of the proposals as appear to them desirable: s 5(3).

NOTE 10--Now it must appear that the implementing of the proposals would be within the powers exercisable under the 1983 Measure, except s 36, by pastoral scheme or order: s 5(4). The commissioners are not obliged to prepare a draft order to give effect to a proposal to create an archdeaconry or a proposal that the income of the endowments of a benefice, or part thereof, are to be paid to the income account of the diocesan stipends fund: *ibid* s 5(4) proviso (iii).

TEXT AND NOTE 12--Now 1983 Measure s 6(1) (amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 3).

NOTE 12--Now the secretary must be required to affix a copy on or near the principal door of every church in the parish and every building licensed by the bishop for public worship in the parish: 1983 Measure s 6(4).

TEXT AND NOTE 13--They must also serve a copy on the Commonwealth War Graves Commission, English Heritage and the Joint Committee of the National Amenities Societies and, if the draft scheme provides for the care and maintenance of the redundant building by the Churches Conservation Trust (see PARA 1137), on that trust: 1983 Measure s 6(3)(a) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 2).

NOTE 14--Now *ibid* s 6(3)(b).

TEXT AND NOTE 16--The provisions of 1983 Measure s 6(3)(a) so far as it relates to the Commonwealth War Graves Commission also apply if the scheme makes such provisions: *ibid* s 6(3).

NOTES 17, 18--Now *ibid* s 6(6), (5); see also s 16(2).

TEXT AND NOTE 19--Now the commissioners may amend any draft scheme or order at the request of the bishop made after consultation with the pastoral committee or as a result of any representations, but any amendments made as a result of any

representations may only be made with the agreement of the bishop given after consultation with the committee: 1983 Measure s 7(1).

TEXT AND NOTES 21, 22--Now where the commissioners, having considered any representations, are of opinion that the draft scheme should be made, and do not propose to amend or further amend it under 1983 Measure s 7, they must submit it to the bishop for his consent and, when he has given his consent, they must seal a copy of the draft scheme and so make the scheme: s 8(1) (s 8(1) amended, s 8(1A)-(1C) added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 3). Where representations with respect to any such draft scheme have been duly made and the commissioners, having considered those representations, are of opinion that the draft scheme should be made, and do not propose to amend or further amend it under s 7, they must, so far as practicable (1) serve on the persons who duly made written representations with respect to the draft scheme notice of the commissioners' decision with respect to the representations together with a statement in writing of the reasons therefor, and (2) serve on any other persons, being interested parties, a copy of the notice: s 8(1A) (as so added). Such a notice must inform those persons who have duly made written representations of their rights to appeal, and a copy of the notice must be sent to the Registrar of the Privy Council: s 8(1B), (1C) (as so added). Where no representations with respect to the draft order have been made, they must seal a copy of it and submit it to the bishop: s 8(2). Where representations with respect to the draft order have been made, then, unless as a result of those representations the commissioners decide that the order should not be made, or they propose to amend or further amend it under s 6, they must seal a copy of it and submit it to the bishop: s 8(3). Where a copy of an order is submitted to the bishop under these provisions, he may by applying his seal to it make the order: s 8(4).

NOTE 22--1968 Measure s 9(1) repealed: Pastoral (Amendment) Measure 1982 s 8(1). 1968 Measure s 9(2), (3) now Pastoral Measure 1983 s 10(1), (2). Now the validity of an order made under 1983 Measure Pt I may not be questioned in any legal proceedings: *ibid* s 11(1). Except as specified, the order comes into operation on the date on which it is made by the bishop: *ibid* s 11(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(iv) Preparation and making of Pastoral Scheme or Order/A. PREPARATION AND SUBMISSION OF PASTORAL SCHEME OR ORDER/879. Notices and other documents.

879. Notices and other documents.

All notices, consents, directions, determinations and requests required or authorised by the Pastoral Measure 1968 to be served, sent, given, made or obtained must be in writing¹. Any notice or other document required or authorised by the Measure to be served on or sent or given to any person may be served, sent or given by delivering it to him, by leaving it at his proper address² or by post³. In the case of corporations, unincorporated bodies having a secretary or clerk, or firms, service or delivery is on or to the secretary or clerk of the corporation or body or a partner of the firm⁴. Any question which arises as to the person on or to whom or the manner in which any notice or other document is to be served, sent or given is decided by the Church Commissioners, whose decision is conclusive⁵.

Where at the material time a parish has no parochial church council, provisions with respect to notices and other things required or authorised to be given or done by or to such councils have effect, if the parish has churchwardens, as if the churchwardens were the council, and if there are no churchwardens the provisions have no effect with respect to that parish⁶.

Where at the material time an archdeaconry has no archdeacon, a deanery has no rural dean, a benefice has no incumbent or the office of vicar in a team ministry is vacant, provisions concerning notices, consents and other things affecting such persons have no effect with respect to the archdeaconry, deanery, benefice or office, as the case may be⁷.

1 Pastoral Measure 1968, s 83 (1).

2 A person's proper address is his last known address, or, in the case of a corporation, its registered or principal office, or, in the case of an unincorporated body or partner, the principal office of the body or firm (ibid s 83 (5)), unless by agreement, in any case, another address in the United Kingdom for the delivery of documents has been furnished (s. 83 (5) proviso).

3 Ibid s 83 (3).

4 Ibid s 83 (4).

5 Ibid s 83 (6).

6 Ibid s 84 (1). The bishop's certificate that a particular parish had no parochial church council or no churchwardens at a specified time is conclusive: s 84 (4).

7 Ibid s 84 (2), (3). The bishop's certificate that the particular office concerned was vacant at a specified time is conclusive: s 84 (4).

UPDATE

879 Notices and other documents

TEXT AND NOTES--Now Pastoral Measure 1983 ss 83, 84.

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B. CONFIRMATION, VALIDITY AND COMMENCEMENT OF SCHEMES AND ORDERS

880. Confirmation of pastoral schemes.

As soon as possible after a pastoral scheme is submitted for confirmation to Her Majesty in Council¹, the Church Commissioners must give notice of the submission to the interested parties², and, so far as practicable, to other persons who made representations³, and must publish notice of it in one or more newspapers circulating in the locality affected⁴. The notice must inform persons who made representations of their right to appeal to Her Majesty in Council against the scheme or any provision of it⁵. If no notice of appeal is given within the time allowed Her Majesty may by Order in Council confirm the scheme⁶. If on an appeal the Judicial Committee proposes that the appeal should be dismissed Her Majesty in Council may accordingly dismiss the appeal and confirm the scheme⁷.

As soon as possible after a scheme is confirmed a notice must be published in the London Gazette sufficiently identifying the scheme, and stating that it has been confirmed and where a copy of the Order in Council may be obtained⁸. The Church Commissioners must send a copy of the Order in Council to the interested parties⁹, to the registrar of the diocese concerned, who must file it in the diocesan registry¹⁰ and, if the scheme contains a declaration of redundancy¹¹, to the Advisory Board for Redundant Churches¹².

The validity of a scheme made and confirmed by Order in Council and notified in the London Gazette may not be questioned in any legal proceedings¹³. Except insofar as the scheme or any part of it is expressed to come into force on a date, event or contingency specified in it, it comes into operation on the date on which it is gazetted¹⁴.

1 le under the Pastoral Measure 1968, s 7 (a): see PARA 878 ante.

2 For the meaning of 'interested parties', see PARA 862 note 2 ante.

3 As to representations, see PARA 878 ante.

4 Pastoral Measure 1968, s 8 (1).

5 Ibid s 8 (1), (2). As to appeals, see PARA 881 post.

6 Ibid s 8 (3). The Order in Council is not a statutory instrument: s 9 (4).

7 Ibid s 8 (4) (b).

8 Ibid s 9 (1).

9 Ibid s 9 (2).

10 Ibid s 9 (3).

11 As to declarations of redundancy, see PARA 1119 et seq post.

12 Pastoral Measure 1968, s 9 (2). As to the board, see PARA 1135 post.

13 Ibid s 10 (1).

14 Ibid s 10 (2).

UPDATE

880 Confirmation of pastoral schemes

TEXT AND NOTES 1-7--Any person who has duly made written representations with respect to the draft scheme may appeal to Her Majesty in Council against the scheme or any provisions thereof, but only with the leave of the Judicial Committee of the Privy Council: Pastoral Measure 1983 s 9(1) (s 9 substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 4). As to such appeals and the reconsideration of draft schemes, see the 1983 Measure s 9(4)-(7) (as so added). The provisions of Sch 2 (see PARA 881) apply to applications for leave to appeal, and to appeals, to Her Majesty in Council under s 9: s 9(2) (as so added). If no notice of intention to apply for leave to appeal is given on or before the date specified in the notice served under s 8(1A) (see PARA 878), or no application for such leave is made within the period prescribed by Sch 2 para 4 (see PARA 881), or no application for such leave is made within the period prescribed by Sch 2 para 4 (see PARA 881), or the Judicial Committee refuses to grant such leave, or the appeal stands dismissed for non-prosecution by virtue of Sch 2 para 11 (see PARA 881), or written representations with respect to the draft scheme have been duly made but it has not been practicable to serve any notice on them under s 8(1A), the commissioners may confirm the scheme: s 9(3) (as so added).

TEXT AND NOTE 8--Repealed: Pastoral (Amendment) Measure 1982 s 8(1).

TEXT AND NOTES 9-12--Now Pastoral Measure 1983 s 10(1), (2) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 5).

TEXT AND NOTE 13--Now Pastoral Measure 1983 s 11(1), omitting reference to confirmation by Order in Council and the requirement of notification (s 11(1) amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 6).

TEXT AND NOTE 14--Now except as provided, the scheme comes into operation on the date on which it is made by the commissioners: Pastoral Measure 1983 s 11(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 6).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(iv) Preparation and making of Pastoral Scheme or Order/B. CONFIRMATION, VALIDITY AND COMMENCEMENT OF SCHEMES AND ORDERS/881. Appeals.

881. Appeals.

Any person who has duly made written representations¹ with respect to a pastoral scheme may appeal to Her Majesty in Council against the scheme or any provision of it by lodging notice of appeal in writing with the Clerk of the Privy Council by registered post or the recorded delivery service, and sending a copy to the Church Commissioners, before the expiration of twenty-eight days beginning with the day immediately after the date of the first publication of the notice of the submission of the scheme² to Her Majesty in Council for confirmation³. If notice of appeal is duly given Her Majesty in Council may order that the appeal be heard by the Judicial Committee of the Privy Council⁴, whereupon the Clerk of the Privy Council gives notice of the order to the appellant and to the Church Commissioners⁵, who are the respondents, and the appellant must without delay lodge in the Privy Council registry his petition of appeal⁶ and, within fourteen days after doing so, serve a copy on the commissioners⁷ who must, without delay, lodge their answer in the registry⁸ and, within fourteen days after doing so, serve a copy on the appellant⁹. As soon as the answer is lodged the appeal must be set down¹⁰, and before the hearing the commissioners must lodge a map showing clearly the boundaries of any ecclesiastical area affected by the scheme¹¹.

At the hearing the onus is on the appellant to satisfy the Judicial Committee that the scheme is open to objections on the merits which justify its being upset¹². The committee may consider the scheme de novo and on its merits, but it will be slow to dissent, save for the most cogent reasons, from the recommendations embodied in the scheme¹³. Having heard the appeal the committee reports on it and may propose to Her Majesty in Council that the appeal should be allowed, dismissed or returned to the commissioners for reconsideration, whereupon Her Majesty in Council may accordingly (1) allow the appeal, in which case the scheme is of no effect but without prejudice to the making and submission of a further scheme¹⁴; or (2) dismiss the appeal and confirm the scheme¹⁵; or (3) return the scheme to the commissioners for reconsideration¹⁶, in which case the commissioners may withdraw it¹⁷, re-submit it without amendment¹⁸ or amend it with the agreement of the bishop given after consultation with the pastoral committee¹⁹. All bills of costs under any order of the Judicial Committee on such an appeal must be referred to the Registrar of the Privy Council for taxation²⁰.

1 As to representations, see PARA 878 ante. Where more than four persons representing the same interest have joined in representations the notice of appeal must be given and the appeal made by not more than four of them acting on behalf of all of them: Pastoral Measure 1968, s 8 (8), Sch. 2 para 2.

2 *Ie* under *ibid* s 7 (a): see PARA 878 ante.

3 *Ibid* s 8 (2), Sch. 2 para 1.

4 *Ibid* s 8 (4).

5 *Ibid* Sch. 2 para 3. If the appellant takes no step to prosecute his appeal within three months from the date he receives this notice the registrar of the Privy Council may be letter inform the Lord President of the Council that the appeal has not been prosecuted, and the appeal thereupon stands dismissed without further order: Sch. 2 para 8. The registrar must send a copy of the letter to the appellant or his solicitor and to the commissioners: Sch. 2 para 8.

6 *Ibid* Sch. 2 para 4. The petition, five copies of which must be lodged, must state succinctly and clearly in consecutive numbered paragraphs the facts necessary to enable the Judicial Committee to make its report under s 8, and to each copy must be annexed a copy of the scheme and any documents in the appellant's possession to which he may wish to refer: Sch. 2 para 4.

7 Ibid Sch. 2 para 4. The annexed documents must also be served: Sch. 2 para 4.

8 Ibid Sch. 2 para 5. The answer should not be limited to formal denials of the allegations in the petition, but should set out candidly the reasons why those allegations are denied: *Elphick v Church Comrs* [1974] AC 562, PC. To each copy must be annexed copies of any documents to which the commissioners may wish to refer: Pastoral Measure 1968, Sch. 2 para 5.

9 Ibid Sch. 2 para 5. The annexed documents must also be served: Sch. 2 para 5.

10 Ibid Sch. 2 para 6.

11 Ibid Sch. 2 para 7.

12 *Elphick v Church Comrs* [1974] AC 562, PC. It is not sufficient for the commissioners to bring forward general statements of policy or broad evidence of trends in manpower and population if objections are brought forward of a concrete and relevant character, supported by factual evidence: *Pim v Church Comrs* (1975) Times, 8th May, PC.

13 *Little Leigh Parochial Church Council v Church Comrs* [1960] 1 WLR 567, PC; *Elphick v Church Comrs* [1974] AC 562, PC.

14 Pastoral Measure 1968, s 8 (4) (a).

15 Ibid s 8 (4) (b). For the procedure on confirmation, see PARA 880 ante.

16 Ibid s 8 (4) (c).

17 Ibid s 8 (5) (a).

18 Ibid s 8 (5) (b). In this event the Judicial Committee, without any further hearing, may propose to Her Majesty in Council that the appeal should be allowed or dismissed, as under s 8 (4): s 8 (6).

19 Ibid s 8 (5) (c). In this event the amended scheme is to be treated as a draft scheme amended under s 6 (see PARA 878 ante), and if the amended scheme is submitted to Her Majesty it is to be treated, on such submission, as a new scheme: s 8 (7).

20 Ibid Sch. 2 para 9. The taxation is regulated by the Judicial Committee Rules 1957, S.I. 1957 No. 2224, so far as they are applicable: Pastoral Measure 1968, Sch. 2 para 9. See further **COURTS**.

UPDATE

881 Appeals

TEXT--The Judicial Committee of the Privy Council may give such further directions in matters of practice and procedure affecting applications for leave to appeal, and appeals, as it considers just and expedient: Pastoral Measure 1983 Sch 2 para 13.

TEXT AND NOTES 1-5--Replaced. Now any person who intends to apply for leave to appeal to Her Majesty in Council under 1983 Measure s 9 (see PARA 880) must on or before the date specified in the notice served on him under s 8(1A) send written notice of his intention to the Registrar of the Privy Council. The notice must be sent by registered post or recorded delivery service and a copy must be sent to the Commissioners: Sch 2 para 1 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 25). Where five or more persons acting jointly duly made written representations with respect to the draft scheme, notice of their intention to apply for leave to appeal, the application for such leave, and, if such leave is granted, the appeal, must be given or made, as the case may be, by not more than four of those persons acting on behalf of themselves and the others: 1983 Measure Sch 2 para 2.

If the Registrar of the Privy Council is satisfied that a notice has been given by a person who has duly made representations with respect to the scheme in question he shall so notify the applicant and the Commissioners. If he is not so satisfied he must inform the

applicant and the Commissioners that the applicant is not entitled to proceed with his application: Sch 2 para 3 (amended by the 2005 Measure Sch 4 para 25).

Within the period of 28 days beginning with the date on which an applicant for leave to appeal receives a notification under the 1983 Measure Sch 2 para 3 from the Registrar he must lodge in the registry of the Privy Council five copies of his application for leave, and the application must state the grounds of his appeal including a succinct statement of any reasons why he considers that the scheme in question, or any particular provision of it, should not have been made, and summarise succinctly and clearly any facts on which, if such leave is granted, he intends to rely in prosecuting his appeal. There must be annexed to each copy of the application a copy of the scheme and of the Commissioners' statement given to the applicant under s 8(1A): Sch 2 para 4 (amended by the 2005 Measure Sch 4 para 25).

The Judicial Committee of the Privy Council must consider an application for such leave, and if it grants leave, the Registrar of the Privy Council must forthwith register the appeal and notify the applicant and the Commissioners that he has done so: 1983 Measure Sch 2 para 5 (amended by the 2005 Measure Sch 4 para 25).

NOTE 5--Now where an appellant, having been granted leave to appeal, fails to lodge his petition of appeal within a period of three months beginning with the date on which he received a notification under *ibid* Sch 2 para 5 or such extended period as the Registrar of the Privy Council may allow, these steps may be taken: *ibid* Sch 2 para 11.

TEXT AND NOTE 6--Now after receiving notice that leave to appeal has been granted, the appellant must without delay lodge his petition of appeal: *ibid* Sch 2 para 6.

NOTE 6--There must also be annexed to each copy a copy of the Commissioners' statement given to the appellant under *ibid* s 8(1A): Sch 2 para 6 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 25).

NOTE 7--Now Pastoral Measure 1983 Sch 2 para 6.

NOTES 8-11--Now *ibid* Sch 2 paras 7, 9, 10.

TEXT AND NOTES 8, 9--Except with the leave of the Judicial Committee of the Privy Council, no document may be introduced in the course of the proceedings on the appeal unless it has been annexed to the petition or to the answer: *ibid* Sch 2 para 8.

NOTE 13--See *Hargreaves v Church Comrs* [1983] 2 AC 457, [1983] 3 All ER 17, PC.

TEXT AND NOTES 14-16--Now if leave to appeal is granted the Judicial Committee of the Privy Council must hear the appeal and may make the proposals specified: Pastoral Measure 1983 s 9(4) (s 9 substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 5).

NOTES 17-19--Now Pastoral Measure 1983 s 9(5)-(7) (s 9 substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 5).

NOTE 20--Now Pastoral Measure 1983 Sch 2 para 12. 1957 Rules replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

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882. Operation of pastoral schemes.

A provision of a pastoral scheme which dissolves any benefice¹, archdeaconry or rural deanery or abolishes or results in the abolition of any office of vicar in a team ministry² may be brought into operation without the assent of the incumbent, archdeacon, rural dean or vicar and without waiting for a vacancy to occur³.

If, on the date of the coming into operation of any provision in a pastoral scheme for holding a benefice in plurality or establishing a team ministry for the area of a benefice or a group ministry for a group of benefices, any of the benefices concerned, or the benefice concerned, is not vacant, and the existing incumbent is not to hold the benefice by virtue of a designation by the scheme or any appointment under it or the Pastoral Measure 1968 the benefice is to be deemed to be vacated on that date⁴.

A pastoral scheme, any provision of which will or may have the effect of vacating a benefice⁵ or of dissolving a benefice or archdeaconry or of abolishing the office of vicar in a team ministry which is not already vacant, must provide that provision is not to come into operation until a date at least six months after the scheme is gazetted⁶ or after the happening of any event or contingency upon which the operation of the scheme depends⁷.

1 For the meaning of 'benefice', see PARA 768 note 1 ante.

2 As to team ministries, see PARA 870 ante.

3 Pastoral Measure 1968, s 24 (1).

4 *Ie* under *ibid* s 24 (2).

5 *Ie* under *ibid* s 24 (2): see *supra*.

6 As to gazetting schemes, see *ibid* s 9 (1), and PARA 880 ante.

7 *Ibid* s 24 (3), which does not apply to a benefice dissolved in consequence of a union of benefices if the incumbent of that benefice is to be the holder of the new benefice created by the union: s 24 (3) proviso (a). The scheme may provide that if, owing to a subsequent vacancy, the provision in question will not have the effect referred to above, it will come into operation either on the date of publication or the happening of the event or contingency or on the vacancy, whichever last occurs: s 24 (3) proviso (b). If, on coming into operation of any provision referred to in s 24 (3), the official residence of the incumbent, archdeacon or vicar concerned is not vested in the diocesan board of finance, proceedings may be taken by the board to recover possession of it: s 24 (4).

UPDATE

882 Operation of pastoral schemes

NOTES 3-5--Now Pastoral Measure 1983 s 25(1), (2).

TEXT AND NOTES 6, 7--Now it must provide that the provision is not to come into operation until a date at least six months after the date on which the scheme is confirmed by Order in Council under 1983 Measure Pt I (ss 1-16) or after the happening

of any such event or contingency: s 25(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 8).

NOTE 7--Now 1983 Measure s 25(3) does not apply to a benefice which is dissolved if the incumbent of that benefice is designated by the scheme as the first incumbent of any benefice created or affected by the scheme or as the first holder of any office of vicar in a team ministry established by the scheme, nor does it apply to an office of vicar in a team ministry which is abolished if the holder of that office is designated by the scheme as the first incumbent of any benefice created or affected by the scheme or as the first holder of any office of vicar in a team ministry established by the scheme: s 25(3) proviso (a). 1968 Measure s 24(3) proviso (b) now 1983 Measure s 25(3) proviso (b); for 'publication', read 'confirmation of the scheme'.

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883. Withdrawal, amendment and revocation of pastoral scheme or order.

If the bishop¹ of the diocese concerned or, as appropriate², the bishops of the dioceses concerned requests or request³ the Church Commissioners not to proceed with any proposals, or to withdraw a draft scheme or order, they must comply with the request, but without prejudice to the making of fresh proposals⁴.

A pastoral scheme may be amended or revoked by a subsequent one or may, in respect of matters falling within the powers exercisable by a pastoral order, be amended by a pastoral order⁵, and a pastoral order may be amended or revoked by a subsequent one or by a pastoral scheme⁶. If an amending pastoral scheme or order relates to other dioceses or diocesan boundaries⁷ the appropriate conditions must be complied with⁸.

An amending pastoral scheme or order may provide for any matters for any which the scheme or order to be amended could have provided⁹.

1 For the meaning of 'bishop', see PARA 813 note 3 ante.

2 Ie in a case to which the Pastoral Measure 1968, s 11 (see PARA 861 ante), s 12 (see PARA 457 ante) or s 13 (2) (see PARA 854 ante) applies.

3 The bishop or bishops must first consult the pastoral committee or committees concerned or, in a case to which ibid s 12 applies, the joint pastoral committee: s 14 proviso.

4 Ibid s 14.

5 Ibid s 40 (1). A scheme or order, or any provision of it may be revoked or amended before it has come into operation: s 40 (5).

6 Ibid s 40 (2).

7 Ie if it involves the exercise of powers under ibid s 35 (see PARA 866 ante) or s 36 (see PARA 457 ante).

8 Ibid s 40 (3). For the conditions, see ss 35, 36, and, in the case of an order, s 38 (m) (see PARA 866 ante).

9 Ibid s 40 (4).

UPDATE

883 Withdrawal, amendment and revocation of pastoral scheme or order

NOTES 2-4--1968 Measure consolidated in Pastoral Measure 1983; see s 15 and table in PARA 1435A. The 1983 Measure s 15 is substituted in relation to pastoral schemes which do not contain a declaration of closure of a church for regular public worship and to pastoral orders by the Dioceses, Pastoral and Mission Measure 2007 ss 23(1), (3), 24, 33.

NOTES 5-9--Now Pastoral Measure 1983 s 39 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 9).

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(v) Matters consequent on Pastoral Schemes or Orders

884. Property.

Where a pastoral scheme creates a new benefice¹ by the union of benefices any church², churchyard, burial ground, parsonage house³ or other property previously vested in right of his benefice in the incumbent of any constituent benefice vests in the incumbent of the new one⁴, subject to any express provision of the scheme and to provisions⁵ which apply where property is held on charitable trusts⁶.

Where by virtue of a pastoral scheme (other than one to which the foregoing applies) or a pastoral order any church or churchyard or burial ground previously vested in the incumbent of a benefice becomes situated in a parish⁷ belonging to another benefice, then, subject as aforesaid, the property and any movable property used for its purposes and so vested vests in the incumbent of that other benefice⁸. If any movable property used for the purposes of a church or churchyard is vested in the churchwardens or parochial church council of a parish and as a result of a pastoral scheme or order the church or churchyard becomes situated in another parish, then subject as aforesaid the property vests in the churchwardens or parochial church council of that other parish⁹.

Where property is transferred by a pastoral scheme or order, or vests in a person by virtue of the general vesting provision¹⁰, it vests without any conveyance and free from all previously existing trusts and charges in favour of any benefice¹¹.

With the incumbrancer's consent a scheme or order may provide for the apportionment of any sum charged on property of which only part is transferred, and for securing the sums so apportioned on the respective parts of the property¹².

1 For the meaning of 'benefice', see PARA 768 note 1 ante.

2 For the meaning of 'church', see PARA 865 note 1 ante.

3 For the meaning of 'parsonage house', see PARA 814 note 5 ante.

4 Pastoral Measure 1968, s 41, Sch. 3 para 6 (1). It does not, however, apply to any parsonage house or endowments for which other provision is made by or under a pastoral scheme: Sch. 3 para 6 (1) proviso (a). For the meaning of 'endowments', see PARA 874 note 1 ante. If the new benefice is to be held by the provost of a parish church cathedral the property concerned vests instead in the chapter or becomes part of the cathedral's capitular revenues: Sch. 3 para 6 (1) proviso (b).

5 I.e. the provisions of *ibid* Sch. 3 para 11: see PARA 887 post.

6 *Ibid* Sch. 3 para 6 (4).

7 For the meaning of 'parish', see PARA 534 ante.

8 Pastoral Measure 1968, Sch. 3 para 6 (2), (4).

9 *Ibid* Sch. 3 para 6 (3), (4).

10 I.e. the provisions of *ibid* Sch. 3 para 6.

11 *Ibid* Sch. 3 para 6 (5). This is, however, subject (1) to the provisions of Sch. 3 para 7 (see PARA 885 post), where applicable (Sch. 3 para 6 (5) (a)); (2) to all other previously existing trusts and charges and any previously existing tenancies (Sch. 3 para 6 (5) (b)); and (3) in the case of endowments, to any provision made

under s 33 (2) (see PARA 874 ante) or any Measure repealed by the Pastoral Measure 1968 for paying or crediting the income (or any part of it) of the endowment to the diocesan stipends fund unless the scheme or order otherwise provides (Sch. 3 para 6 (5) (c)).

12 Ibid Sch. 3 para 6 (6).

UPDATE

884 Property

NOTES--Consolidated in Pastoral Measure 1983; see s 40, Sch 3 para 7.

NOTE 4--Reference to endowments repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTE 11--Now it vests without any conveyance and free, in the case of property consisting of diocesan glebe land or a house situated on such land, from the previously existing trust in favour of the diocesan stipends fund and, in the case of any other property, from all previously existing trusts and charges in favour of any benefice: 1983 Measure Sch 3 para 7(5).

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885. Loans and assessments.

Where a loan¹ has been made in respect of property vested in an incumbent in right of his benefice and the property is transferred by a pastoral scheme or order to the incumbent of another benefice or vests in him by virtue of any provision of the Pastoral Measure 1968, the loan becomes secured on the property and revenues of the benefice to which the transfer is made². If the property is transferred to the diocesan board of finance the Church Commissioners may, unless the scheme or order otherwise provides, cause the loan to be discharged immediately out of the diocesan pastoral account or any proceeds of the disposal of the property³.

Where any property belonging to a benefice is transferred by a pastoral scheme or order to, or is, by virtue of the Pastoral Measure 1968, vested in the diocesan board of finance or the incumbent of another benefice, the commissioners and the diocesan parsonages board⁴ may respectively make consequential variations in any existing order or assessment made under the Ecclesiastical Dilapidations Measures 1923 to 1951 and may apply any such order or assessment or part of it to any new benefice affected by the transfer or vesting⁵.

1 The loans concerned are those made under the Clergy Residences Repair Act 1776 (repealed in part), the Ecclesiastical Dilapidations Measures 1923 to 1951 (largely repealed) or under any other Act or Measure being in each case loans in respect of which principal money or interest is owing to the Church Commissioners: Pastoral Measure 1968, Sch. 3 para 7 (1).

2 Ibid Sch. 3 para 7 (2).

3 Ibid Sch. 3 para 7 (3). The commissioners may postpone the discharge for such a period and on such conditions as they may determine and they have a discretion over payment of interest during any postponement: Sch. 3 para 7 (3). If necessary, they may determine whether a loan, and what part of it, was made in respect of a particular property and apportion a loan to the parts of the property in respect of which it was made: Sch. 3 para 7 (4).

4 For the transfer of the functions of the former diocesan dilapidations boards to diocesan parsonages boards, see the Repair of Benefice Buildings Measure 1972, s 29. As to these boards, see PARA 520 ante.

5 Pastoral Measure 1968, Sch. 3 para 8. With the concurrence of the diocesan parsonages board the commissioners may determine the manner in which any unexpended money paid under those Measures in respect of any benefice affected by the transfer or vesting are to be applied: Sch. 3 para 8.

UPDATE

885 Loans and assessments

NOTES 1, 3--Now Pastoral Measure 1983; see Sch 3 para 8.

TEXT AND NOTE 2--Repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 4, 5--Not reproduced in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(v) Matters consequent on Pastoral Schemes or Orders/886. Transfer to diocesan board of finance.

886. Transfer to diocesan board of finance.

Where any property is transferred¹ by a pastoral scheme or order to the diocesan board of finance² for disposal, the board may dispose of it as a whole or in parts and at such time or times as it deems right, and the board's powers include powers of sale, letting and exchange of land³.

The scheme or order may provide for the application of the net proceeds of disposal (including net premiums and rents), or any part of them, towards the provision of a church⁴ or the provision, restoration, improvement or repair of a church or parsonage house⁵ or a house for a vicar in a team ministry or an assistant curate⁶.

Notwithstanding the foregoing, the board may elect to take over and hold as part of its corporate property any property transferred to it for disposal, giving such consideration as, with its concurrence, the commissioners may determine as representing the fair value of the property⁷.

Where a pastoral scheme or order provides for the transfer of property to the board for use for diocesan or parochial purposes the transfer is, scheme otherwise provides, without consideration, in which case no rent is payable by a parochial church council which uses it for parochial purposes⁸. The board may appoint such a council as managers or managing trustees of any property to be used for parochial purposes⁹.

1 ie under the Pastoral Measure 1968, s 31 (see PARA 876 ante) or s 33 (see PARAS 874, 875 ante).

2 As to the diocesan board of finance, see PARAS 517, 518 ante.

3 Pastoral Measure 1968, Sch. 3 para 9 (1). The approval of the Church Commissioners is required to the terms of any disposal: Sch. 3 para 9 (2).

4 For the meaning of 'church', see PARA 865 note 1 ante.

5 For the meaning of 'parsonage house', see PARA 814 note 5 ante.

6 Pastoral Measure 1968, Sch. 3 para 9 (3). However, except insofar as the scheme so provides, (1) if the property consists of a parsonage house or its sit, the net proceeds must be paid into the diocesan pastoral account (Sch. 3 para 9 (3) (a)); and (2) in the case of any other property, they must be paid either to the capital or to the income account of the diocesan stipends fund, as the commissioners, after consulting the diocesan board of finance, may determine (Sch. 3 para 9 (3) (b)). Sums to be paid into any of these accounts are taken over and held by the commissioners as part of their corporate property, and they must credit the appropriate fund or account with an equivalent amount charged upon their general fund: Sch. 3 para 10 (1). Where the endowments or endowment income of a benefice are transferred or appropriated under a pastoral scheme or order, the commissioners must make the necessary or desirable adjustments in any sums appropriated in their books to the benefices affected under any Act or Measure and in any charges created thereunder: Sch. 3 para 10 (2). As to diocesan pastoral accounts, see PARA 1236 post; as to the diocesan stipends funds, see PARA 1235 post.

7 Ibid Sch. 3 para 9 (4). The consideration given by the board is applied, paid or credited as if it were the net proceeds of the disposal of the property: Sch. 3 para 9 (4).

8 Ibid Sch. 3 para 9 (5) (a).

9 Ibid Sch. 3 para 9 (5) (b).

UPDATE

886 Transfer to diocesan board of finance

NOTES--Consolidated in Pastoral Measure 1983; see Sch 3 paras 9, 10.

NOTE 1--Now under 1983 Measure s 31 only: *ibid* Sch 3 para 9(1).

TEXT AND NOTE 3--The board's powers also include power to demolish any building or part of it so transferred: *ibid* Sch 3 para 9(1).

TEXT AND NOTES 4-6--The scheme or order may no longer provide for the application of the net proceeds of disposal towards the provision of a church; but it may now also provide for the provision, restoration, improvement or repair of a place of worship within the meaning of 1983 Measure s 46 (see PARA 1120): *ibid* Sch 3 para 9(3).

NOTE 6--Now however, except in so far as the scheme so provides, the net proceeds must be paid into the capital account of the diocesan stipends fund or into the diocesan pastoral account, or partly into the one and partly into the other, as the Diocesan Board of Finance may determine or as the scheme may provide: 1983 Measure Sch 3 para 9(3). 1968 Measure Sch 3 para 10(1) now 1983 Measure Sch 3 para 10; the commissioners must allow interest at such rate as they may determine upon all sums credited to a diocesan pastoral account. Sch 3 para 10(2) repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(v) Matters consequent on Pastoral Schemes or Orders/887.
Ecclesiastical charities.

887. Ecclesiastical charities.

Where on the dissolution of a benefice by a pastoral scheme, whether in consequence of a union of benefices or otherwise, any property of a charity established for ecclesiastical purposes of the Church of England is vested in or under the management or control of the incumbent, with or without other persons, or of a corporation of which he is a member, the trusts of the charity or constitution of the corporation have effect with the substitution for that incumbent of the incumbent of the new benefice created by the union or, in a case arising otherwise than in consequence of a union, of the incumbent of a benefice¹ specified by the Charity Commissioners².

Where a pastoral scheme brings about a union of benefices or parishes or alters the area of a benefice or parish and the purposes of an ecclesiastical charity are defined by reference to a benefice or parish affected by such a scheme, the trusts of the charity take effect with reference to the benefice or parish created by the union, or as altered³.

Where, by reason of the dissolution of a parish by pastoral scheme, the parochial church council ceases to exist and any property vested in it or held on its behalf is not otherwise dealt with under the foregoing provisions, the property, without any conveyance or other assurance, vests in or is held on behalf of the parochial church council of the parish in which the parish church of the dissolved parish, or its site, is situated, for the like purpose, as nearly as may be, as those for which it was previously applicable⁴.

If as a condition of any benefaction, attendance at or the performance of divine service or any other act is required at a church which ceases to be used for divine service in consequence of a declaration of redundancy⁵ made by a pastoral scheme and the case is not provided for under the foregoing provisions, the parish church of the parish where the redundant church or its site is situated becomes the relevant place for the purpose of the performance of the required act⁶.

None of the foregoing apply to any fund or property for which provision is made under the provisions⁷ relating to trusts for the repair of redundant buildings⁸.

1 I.e a benefice the area of which incorporates part of the area of the dissolved benefice: pastoral Measure 1968, Sch. 3 para 11 (1).

2 Ibid Sch. 3 para 11 (1). Corresponding rules apply where any such property is vested in or under the control or management of the churchwardens or parochial church council of a parish dissolved by a pastoral scheme: Sch. 3 para 11 (2). Any change under Sch. 3 para 11 (1), (2), in the vesting of property takes effect without any conveyance or other assurance: Sch. 3 para 11 (3).

3 Ibid Sch. 3 para 11 (4). Where the administration or purposes of such a charity are affected by a pastoral scheme or order the charity Commissioners' powers to make schemes under the Charities Act 1960, s 18, may be exercised on the application of the diocesan board of finance as well as in accordance with s 18: Pastoral Measure 1968, Sch. 3 para 11 (5). Any schemes or orders made by the Charity Commissioners for purpose arising in connection with a pastoral scheme or order may be made before the date on which either comes into operation, but not so as to take effect that date: Sch. 3 para 11 (6). See further **CHARITIES**.

4 Ibid Sch. 3 para 11 (7). Any question arising as to the application of any such property or the income of it must be referred to the bishop of the diocese, whose decision is final: Sch. 3 para 11 (7).

5 As to declarations of redundancy, see PARA 1119 et seq post.

6 Pastoral Measure 1968, Sch. 3 para 11 (8).

7 le under ibid s 63: see PARAS 1124, 1125 post.

8 Ibid Sch. 3 para 11 (9).

UPDATE

887 Ecclesiastical charities

TEXT--Where any property of a charity established for ecclesiastical purposes of the Church of England is vested in or under the management or control of the incumbent of a benefice, with or without other persons, or a corporation of which the incumbent of a benefice, with or without other persons, or a corporation of which the incumbent of a benefice is a member, and the benefice becomes vacant or the bishop declares a suspension period in respect of the benefice, then, during the period of the vacancy or during the suspension period, as the case may be, the trusts of the charity or the constitution of the corporation have effect with the substitution for the incumbent of that benefice of the priest in charge of that benefice: Pastoral Measure 1983 s 74(1). Any charge under this provision takes effect without any conveyance or other assurance: s 74(2). These provisions do not apply to any fund or property for which provision is made under s 63 (see PARAS 1124, 1125): s 74(3).

NOTES--Consolidated in Pastoral Measure 1983; see Sch 3 para 11.

NOTE 2--Corresponding rules also apply where any such property is vested in or under the management or control of the incumbent of a benefice or a corporation of which he is a member and a team ministry is established by a pastoral scheme for an area comprising the whole or major part of the area of that benefice: ibid Sch 3 para 11(3) (amended by Team and Group Ministries Measure 1995 s 6(4)). 1968 Measure Sch 3 para 11(3) now 1983 Measure Sch 3 para 11(4).

NOTES 3-8--1968 Measure Sch 3 para 11(4)-(9) now 1983 Measure Sch 3 para 11(5)-(10).

NOTE 3--1968 Measure Sch 3 para 11(5) now 1983 Measure Sch 3 para 11(6). For 'Charities Act 1960 s 18' read 'Charities Act 1993 s 16': 1983 Measure Sch 3 para 11(6), as amended by the Charities Act 1993 Sch 6 para 18(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(vi) Compensation of Clergy/888. Principles of entitlement.

(vi) Compensation of Clergy

888. Principles of entitlement.

The incumbent of a benefice dissolved by a pastoral scheme or deemed¹ to be vacated, the archdeacon of a archdeaconry dissolved by a pastoral scheme and a vicar in a team ministry whose office is abolished by or as a result of a pastoral scheme or order are entitled to compensation for any consequential loss², and special provisions³ relate to pensions payable under the Clergy Pensions Measure 1961⁴.

The right to and amount of compensation are determined in the first instance by the pastoral committee, with a right to appeal by the claimant to the appeal tribunal for the relevant province⁵. The committee's compensation functions may not be delegated to a sub-committee⁶. At any meeting of the committee at which a compensation decision or determination is made or the person affected is interviewed the members present must include the bishop⁷ or suffragan bishop and the member representing the diocesan board of finance⁸.

Compensation consists of periodical payments or a lump sum payment, or partly of one and partly of the other⁹. The pastoral committee must take into account the emoluments of any ecclesiastical office (including another benefice) to which the claimant has been or is to be appointed and any other regular remunerated employment in which he is or is to be appointed and any other regular remunerated employment in which he is or is to be engaged¹⁰, and may take into account those of any ecclesiastical office which he refuses without good reason to accept, if the committee considers it reasonably comparable to the office in respect of which compensation is claimed¹¹. Any person who has been refused compensation or who is receiving or has received compensation may apply to the committee for a grant, renewal or increase of compensation¹² on the ground that circumstances¹³ have materially altered to his disadvantage¹⁴.

Every claimant, applicant¹⁵ and person receiving compensation by way of periodical payments must disclose to the committee any ecclesiastical office to which he has been appointed or to which has been offered to him, together with any other remunerated employment in which he is or is to be engaged and any specified matter¹⁶ entitling the committee to refuse a claim¹⁷.

If anyone claiming, receiving or having received compensation (1) executes a deed of relinquishment¹⁸, (2) becomes a member of a religious body not in communion with the Church of England¹⁹, or (3) becomes disqualified from holding preferment in the Church of England²⁰, the pastoral committee may refuse his claim or order that no further payment be made²¹.

¹ See under the Pastoral Measure 1968, s 24: see PARA 882 ante.

² Ibid s 25, Sch. 4, PARA 1. The same persons are also entitled to compensation for loss following upon resignation if they resign, by agreement with the pastoral committee, to enable a pastoral scheme or order to come into operation or to facilitate its doing so: Sch. 4 para 3. Where the incumbent of a benefice for which a team ministry is established is designated or appointed the first rector, for a term of years, he is entitled to compensation for loss if required to vacate his office on the expiration of any term for which it is held: Sch. 4 para 2.

The loss suffered includes loss arising from ceasing to occupy the parsonage house or other official residence and any expenses arising from a change of residence: Sch. 4 para 4. For the meaning of 'parsonage house', see PARA 814 note 5 ante.

3 Thus, any period after the dissolution, abolition, vacation or resignation and before his retirement during which he is not in pensionable service (as defined in PARA 742 ante) is deemed for the purposes of the Clergy pensions Measure 1961 to be a period of pensionable service, except for any period after the happening of the events described in the Pastoral Measure 1968, Sch. 4 para 10 (see infra), and in the case of a vicar in a team ministry, any period after his term of office would have ended: Sch. 4 para 12 (1) (a). On attaining the retiring age (as defined in PARA 743 note 2 ante) he is deemed to retire unless he is then in actual pensionable service, and if his total period of such service is less than the qualifying period (as defined in PARA 742 ante) it is deemed to be increased to that period: Sch. 4 para 12 (1) (b). This increase is disregarded in determining compensation under Sch. 4 para 12 (2). If he is thus deemed to retire and his total period of pensionable service is less than forty years the pastoral committee may add to his pension and the pension (if any) of his widow or dependant periodical payments to bring it up to the amount payable after forty years' service; otherwise compensation ceases to be payable when he is deemed to retire or retires: Sch. 4 para 12 (1) (c). The Committee may, with the agreement of the Church of England Pensions Board and the person concerned, modify these provisions or substitute others which appear more appropriate, provided they are not less advantageous to the person concerned: Sch. 4 para 12 (1) Proviso. As to clergy pensions generally, see PARA 738 et seq ante.

4 Pastoral Measure 1968, Sch. 4 para 12. This extends to any dissolution, abolition, vacation or resignation under Sch. 4, PARAS 1-3: see the text to notes 1, 2 supra.

5 Ibid Sch. 4 para 5. As to the appeal tribunals, see PARA 890 post. The Church Commissioners are empowered to make procedural rules relating to claims for compensation, alterations, termination and suspension of payments and proceedings before appeal tribunals: Sch. 4 para 15 (1). The rules must be laid before and approved by the General Synod, and operate as a statutory instrument made under an Act providing that rules be subject to annulment by resolution of either House of Parliament: Sch. 4 para 15 (2); Synodical Government Measure 1969, s 2 (2). See the Compensation of Clergy Rules 1970, No. 1009, and PARA 889 post.

6 Pastoral Measure 1968, Sch. 4 para 13 (1).

7 For the meaning of 'bishop', see PARA 813 note 3 ante.

8 Pastoral Measure 1968, Sch. 4 para 13 (2). If the board's member is not available he may be replaced by another member or officer of the board (who need not be a member of the committee), nominated by the board to act at a particular meeting: Sch. 4 para 6 (13) (2) proviso.

9 Ibid Sch. 4 para 6 (1). The periodical payments are not assignable: Sch. 4 para 6 (1). Pending the final determination of a claim, the pastoral committee may make payments on account: Sch. 4 para 6 (2). Payments are made by the diocesan board of finance and charged either on the capital or income account of the diocesan stipends fund, as may be agreed by the commissioners and the board: Sch. 4 para 17.

10 Ie Sch. 4 para 7 (a).

11 Ibid Sch. 4 para 7 (b). If such an office is refused by a person already receiving compensation in the form of periodical payments, the committee may suspend or reduce them (and the same applies if such a person is appointed to any ecclesiastical office or becomes engaged in any remunerated employment), but the person affected has a right of appeal: Sch. 4 para 8.

12 Ie whether by way of an increase of periodical payments or a lump sum payment or both: ibid Sch. 4 para 9.

13 Ie circumstances of which account was taken under ibid Sch. 4 para 9.

14 Ibid Sch 4 para 9. The committee may grant, renew or increase the compensation accordingly, and appeal lies against its refusal to do so: Sch. 4 para 9.

15 Ie an applicant under ibid Sch. 4 para 9.

16 Ie any matter mentioned in ibid Sch. 4 para 10: see infra.

17 Ibid Sch. 4, PARA 11. If it appears to the pastoral committee that in consequence it has made payments it would not otherwise have made or greater payments than it would otherwise have made it may direct repayment of the whole, the excess, or part of either and the amount is recoverable as a debt due to the diocesan board of finance: Sch. 4 para 11. There is a right of appeal against the direction: Sch. 4 para 11 proviso.

18 Ie under the Clerical Disabilities Act 1870 (see PARA 686 ante): Pastoral Measure 1968, Sch. 4 para 10 (a).

19 Ibid Sch. 10 (b). As to being in communion with the Church of England, see PARA 313 ante.

20 He is disqualified under the Ecclesiastical Jurisdiction Measure 1963 (see s 49 (1) (a), and PARA 1373 post): Pastoral Measure 1968, Sch. 4 para 10 (c).

21 Ibid Sch. 4 para 10 The order is subject to appeal: Sch. 4 para 10.

UPDATE

888-891 Compensation of Clergy

The provisions of Pastoral Measure 1968 Sch 4 paras 5-14, 16 and 17 were extended to apply to compensation available under Incumbents (Vacation of Benefices) Measure 1977: *ibid* s 13(3); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 2. The 1968 Measure is now consolidated in the Pastoral Measure 1983; see Sch 4.

Certain paragraphs referred to above are amended where stated for the purposes of the 1977 Measure only; as to general amendments now contained in the 1983 Measure, see PARAS 888, 889, 890, 891.

The 1983 Measure Sch 4 applies to any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: 2003 Measure s 41.

888 Principles of entitlement

NOTE 1--Now Pastoral Measure 1983 s 25 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 8).

NOTE 2--Now *ibid* s 26 (amended by Team and Group Ministries Measure 1995 s 4), Sch 4 para 1. Schedule 4 now has effect in relation to a deacon to whom the 1983 Measure s 20(3A) (see PARA 870) applies as it has effect in relation to a vicar in a team ministry: s 26(2), as added.

Entitlement to compensation for loss following upon resignation arises on resignation after the making of the scheme or order: 1983 Measure Sch 4 para 4 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 21). Where the incumbent of a benefice being a benefice for the area of which a team ministry is established or a benefice dissolved by a pastoral scheme, is designated or chosen as the first holder of any office of vicar in a team ministry, he is, if he is required to vacate the office on the expiration of any term for which it is held, entitled to compensation for consequential loss: 1983 Measure Sch 4 para 3. 1968 Measure Sch 4 paras 2, 4 now 1983 Measure Sch 4 paras 2, 5.

NOTE 3--Now 1983 Measure Sch 4 para 13. In 1968 Measure Sch 4 para 12(1)(c) (now 1983 Measure para 13(1)(c); Priests (Ordination of Women) Measure 1993 Sch 3 para 8; SI 2005/3325), for 'forty years' read 'the prescribed period' which means, in relation to a person who is deemed to retire for the purposes of the 1961 Measure (replaced in part by the Church of England Pensions Regulations 1988, SI 1988/2256; SI 1992/1748; SI 2005/3325) and 1983 Measure Sch 4 para 13, the minimum period of pensionable service the performance of which by him would entitle him to a pension at the highest rate applicable in his case: Sch 4 para 13(1). Provision that otherwise compensation ceases to be payable when he is deemed to retire or retires omitted.

These provisions apply in relation to any lump sum payable in accordance with any rules made under Clergy Pensions (Amendment) Measure 1967 s 3 to a person entitled to a pension under 1961 Measure as they apply in relation to a pension under the 1961 Measure (replaced in part: SI 1988/2256): 1983 Measure Sch 4 para 13(2). 1968

Measure Sch 4 para 12(1) proviso now 1983 Measure Sch 4 para 13(3); Priests (Ordination of Women) Measure 1993 Sch 3 para 8; SI 2005/3325.

1968 Measure Sch 4 para 12(2) now 1983 Measure Sch 4 para 13(4) as follows: compensation is not payable for any loss which the incumbent, archdeacon or vicar in a team ministry might suffer by reason of the provision in Sch 4 para 13(1) (b) that on attaining the retiring age within the meaning of the 1961 Measure he is deemed to retire for the purposes of that Measure and Sch 4 para 13, and, except as provided by Sch 4 para 13(1) (c), compensation ceases to be payable when he attains that age. Cf *Re Flenley* [1981] Fam 64, PARA 733F.

In determining the amount of the compensation, if any, to which the incumbent, archdeacon or vicar in a team ministry is entitled under Sch 4 in respect of any period before he retires or is deemed to retire for the purposes of the 1961 Measure and Sch 4 para 13, any benefit which may accrue to him by virtue of Sch 4 para 13(1) is to be disregarded: Sch 4 para 13(5).

Any reference in Sch 4 para 13 to the 1961 Measure is construed as a reference to that Measure, as amended by any regulations approved under Clergy Pensions (Amendment) Measure 1972 s 6 and now replaced in part by the 1988 Regulations, SI 1988/2256: 1983 Measure Sch 4 para 13(6).

TEXT AND NOTE 4--Now, the incumbent of any benefice which is resigned or vacated in the circumstances mentioned in Incumbents (Vacation of Benefices) Measure 1977 s 4 or s 10 is entitled to compensation for any consequential loss and special provisions relate to pensions payable under the Clergy Pensions Measure 1961: Pastoral Measure 1968 Sch 4 para 12(1); Incumbents (Vacation of Benefices) Measure 1977 s 13(3) (b).

NOTE 4--Now 1983 Measure Sch 4 para 13.

NOTE 5--Now *ibid* Sch 4 paras 6, 16; Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 2.

Any rules made under Pastoral Measure 1968 Sch 4 para 15 apply, with any necessary modifications, to proceedings under that Schedule as extended by Incumbents (Vacation of Benefices) Measure 1977 s 13(3), see *ibid* s 13(4).

NOTES 6, 8--Now 1983 Measure Sch 4 para 14 (amended by the Dioceses, Pastoral and Mission Measure 2007 s 60).

NOTE 9--Now 1983 Measure Sch 4 paras 7, 18.

NOTES 10, 11--Now *ibid* Sch 4 paras 8, 9.

NOTES 12-15--Now *ibid* Sch 4 para 10.

NOTES 16, 17--Now *ibid* Sch 4 paras 11, 12.

NOTES 18-21--Now *ibid* Sch 4 para 11.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(vi) Compensation of Clergy/889. Claim for compensation.

889. Claim for compensation.

A Claim for compensation must be made in writing and sent to the secretary of the pastoral committee¹, before the date on which the relevant provision of the pastoral scheme or order comes into operation or not later than thirteen weeks after that date². The claim must give particulars of the loss suffered³ and of the matters which it is the claimant's duty to disclose⁴. The amount claimed must be stated, whether as periodical payments or a lump sum, or partly one and partly the other (stating the amounts under each head⁵).

The claimant has a right to an interview with the committee before the determination of his claim⁶, at which he may be represented by a barrister or solicitor or assisted by a friend⁷.

The committee must give a reasoned decision in writing within twenty-eight days of the making of the claim or of the interview⁸. It must explain how the amount of compensation is calculated, and is not limited to the amount claimed, or bound by the form in which compensation is claimed⁹.

Before the committee exercises its powers with regard to the suspension, reduction or termination of compensation, or the recovery of payments¹⁰, the secretary must give written notice to the person concerned that the committee is considering the exercise of those powers on grounds specified in the notice¹¹. That person may, within fourteen days after the giving of the notice, send written representations to the secretary with respect to any relevant matters¹². The committee must give a reasoned decision in writing¹³.

An application¹⁴ for a grant or renewal of compensation or for an increase on the ground of change of circumstances must be in writing sent or delivered to secretary¹⁵, giving particulars of the change and, if it is for a grant or increase, must state the amount claimed, whether by way of periodical payments or a lump sum, or partly one and partly the other (stating the amounts under each head)¹⁶.

1 Compensation of Clergy Rules 1970, S.I. 1970 No. 1009, r 3(i). The committee concerned is the pastoral committee for the diocese in which the incumbent, vicar in a team ministry or archdeacon concerned was serving before the coming into operation of the relevant provision of the pastoral scheme or order affecting his benefice or diocese or, in the case of a claim made before then, the diocese in which he is serving: r 2. The committee must take steps to inform all persons who have or may have a right to compensation of the name and address of the committee secretary, whose duty it is to give assistance to those persons in connection with claims or other proceedings under the rules: r 13.

2 Ibid r 3 (2). The committee may extend the time for making a claim, and the making of a claim does not preclude the giving of supplementary written information or any addition to or amendment of the claim: r 3 (2).

3 This includes any loss arising from the claimant's ceasing to occupy the parsonage house or other official residence and expenses arising from a change of residence: *ibid* r 4 (1).

4 Ibid r 4 (1). As to these matters, see PARA 888, text to notes 15-17 ante.

5 Ibid r 4 (2). The claimant may be required to verify information given or to give further information: r 4 (3).

6 Ibid r 5 (1). He must state in writing whether he wants an interview and may in any event be required to attend for interview: r 5 (1). The secretary must give reasonable notice of the interview: r 5 (2).

7 Ibid r 5 (3).

8 Ibid r 6 (1). The secretary must forthwith send the claimant a copy of the decision: r 6 (2).

- 9 Ibid r 6 (1). If compensation is given in the form of periodical payments the recipient must give an undertaking (for the form, see Appendix) to furnish prescribed information as to offers of appointments, relinquishments, disqualifications, etc., and he may be required to furnish or verify relevant information: see r 7.
- 10 Ie under the Pastoral Measure 1968, Sch. 4 para 8, 10 or 11: see PARA 888 ante.
- 11 Compensation of Clergy Rules 1970, r 8 (1).
- 12 Ibid r 8 (2).
- 13 Ibid r 8 (3).
- 14 Ie under the Pastoral Measure 1968, Sch. 4 para 9: see PARA 888 ante.
- 15 Compensation of Clergy Rules 1970, r 9 (1).
- 16 Ibid r 9 (2). Rules 4 (3), 5, 6, apply as in the case of an original application: r 9 (3).

UPDATE

888-891 Compensation of Clergy

The provisions of Pastoral Measure 1968 Sch 4 paras 5-14, 16 and 17 were extended to apply to compensation available under Incumbents (Vacation of Benefices) Measure 1977: *ibid* s 13(3); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 2. The 1968 Measure is now consolidated in the Pastoral Measure 1983; see Sch 4.

Certain paragraphs referred to above are amended where stated for the purposes of the 1977 Measure only; as to general amendments now contained in the 1983 Measure, see PARAS 888, 889, 890, 891.

The 1983 Measure Sch 4 applies to any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: 2003 Measure s 41.

889 Claim for compensation

TEXT AND NOTES--Compensation of Clergy Rules 1970 apply, with any necessary modifications, to proceedings under Pastoral Measure 1968 Sch 4, as extended by Incumbents (Vacation of Benefices) Measure 1977 s 13(3), see *ibid* s 13(4).

NOTE 10--Now Pastoral Measure 1983 Sch 4 para 9, 11 or 12.

NOTE 14--Now *ibid* Sch 4 para 10.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(vi) Compensation of Clergy/890. Appeal tribunals.

890. Appeal tribunals.

For the purposes of compensation provisions there is an appeal tribunal for each of the provinces of Canterbury and York¹, constituted of (1) the Dean of the Arches and Auditor, who is chairman; the vicar-general of the Province of York, who is deputy chairman²; (2) four persons nominated for each appeal by the Dean of the Arches or the vicar-general of the Province of York from a panel of six appointed by the Lower House of the convocation of the province concerned from among its members³; and (3) two persons similarly nominated for each appeal from a panel of four appointed by the House of Laity of the General Synod⁴. The Church Commissioners must appoint a secretary to the appeal tribunal for each province or to both tribunals⁵.

The tribunal's expenses in connection with any appeal are paid out of money standing to the credit of the diocesan pastoral account of the diocese from which the appeal is brought⁶.

Any costs reasonably incurred by a claimant⁷ are to be reunded to him out of the legal aid fund⁸, and any question whether costs have been so incurred or as to their amount is to be determined on application to the diocesan registrar with a right of appeal to the chancellor⁹.

1 Pastoral Measure 1968, s 25, Sch. 4 para 14 (1).

2 Ibid Sch. 4 para 14 (1) (a). One but not both of these must sit on each appeal and preside (Sch. 4 para 14 (1) (a)), although if neither is available a diocesan chancellor chosen by one of them must preside (Sch. 4 para 14 (1) (a) proviso). As to the vicar-general, see PARA 430 note 3 ante.

3 Ibid Sch. 4 para 14 (1) (b). The persons so appointed are appointed for the lifetime of the convocation, and on a casual vacancy another member of the House concerned is appointed for the remainder of that lifetime: Sch. 4 para 14 (2). When a new House falls to be elected the persons appointed continue until the first session of the new House and, if they have heard part of an appeal, may continue until its determination: Sch. 4 para 14 (2) proviso.

4 Ibid Sch. 4 para 14 (1) (c). The persons so appointed are appointed for the lifetime of the House of Laity: Sch. 4 para 14 (2). For the position on a vacancy, or where a new House is elected, see note 3 supra.

5 Ibid 4 para 14 (3).

6 Ibid 4 para 14 (4).

7 Ie by a person having a right to compensation under ibid Sch. 4 para 1, 2 or 3 (see PARA 888 ante) in the circumstances therein mentioned.

8 Ie the legal aid fund constituted under the Ecclesiastical Jurisdiction Measure 1963, s 59: see PARA 1305 post.

9 Pastoral Measure 1968, Sch. 4 para 16; Compensation of Clergy Rules 1970, S.I. 1970 No. 1009, r 12.

UPDATE

888-891 Compensation of Clergy

The provisions of Pastoral Measure 1968 Sch 4 paras 5-14, 16 and 17 were extended to apply to compensation available under Incumbents (Vacation of Benefices) Measure 1977: ibid s 13(3); Church of England (Legal Aid and Miscellaneous Provisions) Measure

1988 Sch 2. The 1968 Measure is now consolidated in the Pastoral Measure 1983; see Sch 4.

Certain paragraphs referred to above are amended where stated for the purposes of the 1977 Measure only; as to general amendments now contained in the 1983 Measure, see PARAS 888, 889, 890, 891.

The 1983 Measure Sch 4 applies to any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: 2003 Measure s 41.

890 Appeal tribunals

NOTES--Consolidated in Pastoral Measure 1983; see Sch 4 para 15.

TEXT AND NOTE 2--Head (1) now the Dean of the Arches and Auditor, who is chairman; the Vicar-General of each of the provinces of Canterbury and York, who are deputy chairmen; and one or other of the three, but not more than one, sit on each appeal and preside: 1983 Measure Sch 4 para 15(1)(a). If none of the three is available to preside over an appeal, a chancellor of a diocese nominated by the Dean of the Arches and Auditor or, in his absence or illness, by the Vicar-General of the province concerned presides: Sch 4 para 15(1)(a).

TEXT AND NOTE 3--In head (2), the four persons are now nominated as in head (1); and for 'six', read 'twelve': 1983 Measure Sch 4 para 15(1)(b). The panel is now appointed from among the members of the Lower House of the Convocation of the Province concerned by, in the case of the Convocation of Canterbury, the Standing Committee of the Lower House and, in the case of the Convocation of York, the body of Assessors of the Lower House of that Convocation: 1983 Measure Sch 4 para 15(1)(b); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 23. 1983 Measure Sch 4 para 15(2) amended in consequence: 1992 Measure Sch 3 para 23.

TEXT AND NOTE 4--In head (3), the panel is now of twelve, and not less than half must be persons with a seven-year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71: 1983 Measure Sch 4 para 15(1)(c); 1990 Act s 71(2), Sch 10 para 54. The panel is now appointed by the Standing Committee of the House of Laity: 1983 Measure Sch 4 para 15(1)(c); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 23. 1983 Measure Sch 4 para 15(2) amended in consequence: 1992 Measure Sch 3 para 23.

NOTE 7--Now, a person having a right to compensation under Incumbents (Vacation of Benefices) Measure 1977 s 13(1), see PARA 733F, in the circumstances therein mentioned: *ibid* s 13(3) (c).

NOTE 8--1963 Measure s 59 repealed. Legal aid fund now maintained under Church of England (Legal Aid) Measure 1994 (see PARA 1305).

TEXT AND NOTE 9--1968 Measure Sch 4 para 16, as replaced by 1983 Measure Sch 4 para 17 repealed: 1988 Measure Sch 3.

NOTE 9--SI 1970/1009 r 12 amended: SI 2007/1556.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(5) PASTORAL SCHEMES AND ORDERS/(vi) Compensation of Clergy/891. Compensation appeals.

891. Compensation appeals.

The claimant may appeal from any decision of the pastoral committee on a claim for compensation, or in the exercise of the committee's powers¹ to suspend or reduce the amount of compensation, or to terminate or recover payments, or on an application² for a grant, renewal or increase of compensation on a change of circumstances, to the appeal tribunal for the province comprising the committee's diocese³.

The appeal is made by sending or delivering to the secretary of the appeal tribunal⁴, within twenty-eight days after the committee's decision was sent to the claimant⁵, a notice of appeal⁶, and by sending a copy to the committee secretary⁷, who must send the appeal tribunal secretary the appellant's written claim and other documents relating to the claim, together with a note of what took place at the committee interview⁸.

The appeal tribunal secretary must give the appellant not less than fourteen days' notice of the hearing⁹, at which the appellant may be represented by a barrister or solicitor or may be assisted by a friend¹⁰. The appeal tribunal may, if it thinks fit, receive oral or written evidence, and is not bound to observe strict rules as to the admissibility of evidence¹¹. It may confirm the committee's decision, substitute such other decision as it thinks just, or send the case back to the committee for reconsideration with such directions as it thinks fit¹².

1 Ie under the Pastoral Measure, Sch. 4 para 8, 10 or 11: see PARA 888 ante.

2 Ie under *ibid* Sch. 4 para 9: see PARA 888 ante.

3 Compensation of Clergy Rules 1970, S.I. 1970 No. 1009, r 10 (1).

4 If the pastoral committee makes a determination or decision from which appeal lies to the appeal tribunal, it is the committee secretary's duty to inform the person concerned of the name and address of the secretary of the appeal tribunal: *ibid* r 13.

5 The time may be extended by the secretary, chairman or deputy chairman of the appeal tribunal, the person nominated to preside over the appeal or by the tribunal: *ibid* r 10 (2).

6 The notice must set out the grounds and, if the relief claimed is a grant of compensation or an increase and the compensation claimed differs from that stated in the original claim or application, must state the compensation claimed: *ibid* r 10 (3).

7 *Ibid* r 10 (2).

8 *Ibid* r 10 (4). A copy of this note must be sent to the appellant: r 10 (4).

9 *Ibid* r 11 (1).

10 *Ibid* r 11 (3).

11 *Ibid* r 11 (2) (a). It may, but need not, require evidence to be given on oath: r 11 (2) (b).

12 *Ibid* r 11 (2) (c).

UPDATE

888-891 Compensation of Clergy

The provisions of Pastoral Measure 1968 Sch 4 paras 5-14, 16 and 17 were extended to apply to compensation available under Incumbents (Vacation of Benefices) Measure 1977: *ibid* s 13(3); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 2. The 1968 Measure is now consolidated in the Pastoral Measure 1983; see Sch 4.

Certain paragraphs referred to above are amended where stated for the purposes of the 1977 Measure only; as to general amendments now contained in the 1983 Measure, see PARAS 888, 889, 890, 891.

The 1983 Measure Sch 4 applies to any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: 2003 Measure s 41.

891 Compensation appeals

TEXT AND NOTES--See Incumbents (Vacation of Benefices) Measure 1977 s 13(4), see PARA 889.

NOTE 1--Now Pastoral Measure 1983 Sch 4 para 9, 11 or 12.

NOTE 2--Now *ibid* Sch 4 para 10.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(i) In general/892. Nature of sequestration of benefice.

(6) SEQUESTRATION OF BENEFICES

(i) In general

892. Nature of sequestration of benefice.

Sequestration¹ of a benefice is a process issued by the bishop or other Ordinary, or by an ecclesiastical court, whereby the profits and income of the benefice are ordered to be taken by one or more persons, called sequestrators, and to be applied in the manner required by the circumstances of the case, care being taken that the duties of the church are provided for out of them².

1 'Sequestration' properly means the setting aside of a thing in controversy from the possession of both the parties contending for it: *Terms de la Ley* 509; *Ayl Par* 493.

2 3 Burn's Ecclesiastical Law (4th Edn) 588 et seq; *Arbuckle v Cowtan* (1803) 3 Bos & P 321 at 328.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(i) In general/893. When sequestration issues.

893. When sequestration issues.

Sequestration of a benefice is issued either for the recovery of a debt from the incumbent or on his bankruptcy¹, or in the course of proceedings against him in an ecclesiastical court², or during a vacancy in the benefice³, or in certain cases of default by the incumbent⁴. It may also be issued where the incumbent is suffering from mental disorder⁵.

1 See PARA 894 et seq post.

2 See PARA 902 et seq post.

3 See PARA 910 et seq post.

4 See PARA 904 et seq post.

5 *Ex parte Hasting* (1807) 14 Ves 182. The provisions of the Incumbents (Disability) Measure 1945 (see PARA 733 et seq ante) make such a course unlikely today.

UPDATE

893 When sequestration issues

NOTE 1--Sequestration of a benefice may no longer issue for the recovery of a debt from the incumbent or on his bankruptcy: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2) (see PARA 894-901).

NOTE 5--1945 Measure repealed, see now Incumbents (Vacation of Benefices) Measure 1977 (see PARA 733A et seq).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/894. How sequestration is obtained.

(ii) Sequestration for Debt or on Bankruptcy

894. How sequestration is obtained.

Sequestration is the legal means by which the creditors of an incumbent can obtain satisfaction of their debts out of the profits of his benefice¹. It is obtained by a writ of fieri facias de bonis ecclesiasticis or a writ of sequestrari facias de bonis ecclesiasticis issued out of the court in which a judgment or order has been obtained for payment of the debt, after a writ of execution has been issued to the sheriff and the sheriff has made a return that the debtor has no goods or chattels out of which the debt can be satisfied, but that he is incumbent of a benefice named in the return². The writ can be issued in an action in the Chancery Division of the High Court where the defendant has been attached for non-payment of a sum which he has been ordered by the court to pay, and non est inventus has been returned to the attachment, and the ordinary writ of sequestration has been thereupon issued, and the return has been made to it that the defendant has no lay property, but is incumbent of a benefice named in the return³.

The writ is admissible in evidence even if the judgment roll contains no entry of its having been awarded⁴. It must not be issued for a sum exceeding the amount of the debt due⁵.

1 2 Co Inst 4; *Arbuckle v Cowtan* (1803) 3 Bos & P 321. Without sequestration there can be no appointment of a receiver of the profits of the benefice: *McCurdy v Chichester* (1837) 2 Jo Ex Ir 358. A judgment against an incumbent does not in itself create a lien on his benefice: *Wise v Beresford* (1843) 3 Dr & War 276.

2 RSC Ord. 47, r 5 (1). For the prescribed forms of writ, see App. A, Forms 58, 59; and see Court Forms. A writ for sequestration cannot properly issue until the sheriff has returned nulla bona to the writ of execution: *Rabbitts v Woodward* (1869) 20 LT 778. If it issues before that it is irregular and may be set aside on application made within reasonable time: *Bromage v Vaughan* (1852) 7 Exch 223. The name and situation of the benefice must be stated in the return: *R v Powell* (1836) 1 M & W 321.

3 *Allen v Williams* (1854) 2 Sm & G 455.

4 *Pack v Tarpley* (1839) 9 Ad & El 468.

5 *Britten v Wait* (1832) 3 B & Ad 915.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

894 How sequestration is obtained

TEXT AND NOTE 2--RSC Ord 47 r 5(1) amended: SI 2003/3361.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/895. Warrant of sequestration.

895. Warrant of sequestration.

The writ is directed to the bishop and, having recited the judgment debt and the return, commands him to enter into the benefice and church and take and sequester them into his possession, and hold them until he has levied the debt, costs and interest out of their profits, and to make a return of the amount after execution¹. The writ must be delivered to the bishop to be executed by him², and on its delivery to him he issues a warrant of sequestration³ to a named sequestrator, which is published by being affixed on or near the door of the church or churches in the benefice⁴. The bishop is personally responsible for the execution of the writ, however, and for any wrong done by a sequestrator, and the warrant of sequestration is merely a direction by the bishop to his own agent to do what the court has ordered him to do⁵.

Possession is taken, and the property is bound, from the time when the warrant is issued and the sequestrator appointed, but publication is necessary to give priority against conflicting rights⁶. After the warrant has been issued the creditor cannot require the bishop to hand the writ back to enable him to indorse a claim for interest upon it⁷.

1 *Anon* (1552) Jenk 206 at 207; *Harding v Hall* (1842) 10 M & W 42 at 52, 53; RSC App. A, Forms 58, 59.

2 RSC Ord. 47, r 5 (2).

3 For the forms of warrant, see Court Forms, and *Lawrence v Edwards* [1891] 1 Ch 144 at 145, 146.

4 Parish Notices Act 1837, s 2. The warrant is sometimes itself called a writ. The bishop either names one or more sequestrators himself, or grants the sequestration to the person or persons named by the party who obtained the writ: 3 Burn's Ecclesiastical Law (4th Edn) 590. As to the sequestrator's remuneration and expenses, see *Re Sanders v Penlease* (1859) 1 LT 54.

5 *Harding v Hall* (1842) 10 M & W 42. The bishop is responsible to the creditor for the amount levied under the sequestration, and the creditor has a right to an account in respect of it against the bishop's legal personal representatives after his death: *Hogg v Garratt* (1849) 12 I Eq R 559. The bishop is responsible, as the sequestrators' principal, for their actions and eg is liable to repay money paid to them under a mistake of fact: *Baylis v Bishop of London* [1913] 1 Ch 127, CA.

6 *Doe d Morgan v Bluck* (1813) 3 Camp 447; *Bennett v Apperley* (1827) 6 B & C 630 at 634; *Waite v Bishop* (1834) 1 Cr M & R 507.

7 *Watkins v Tarpley* (1847) 5 Dow & L 226.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

895 Warrant of sequestration

TEXT AND NOTE 4--1837 Act repealed: Statute Law (Repeals) Act 2004.

NOTE 4--The churchwardens of every parish comprised in the benefice and the rural dean, together with any other person the bishop of the diocese may appoint, must now be the sequestrators: Church of England (Miscellaneous Provisions) Measure 1992 s 1(1) (see PARA 910).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/896. Several sequestrations.

896. Several sequestrations.

As between two writs of sequestration against the same benefice, in the absence of a court direction to the contrary, the bishop must issue his warrants of sequestration under them in the order in which they are delivered to him, and not in the order of their teste¹. Where several judgments are entered against an incumbent and writs of sequestration are granted in aid of them, however, the court may require the bishop to issue sequestration in the order in which the judgments are entered². Where a benefice is under sequestration at the suit of a judgment creditor, a subsequent judgment creditor who has taken out sequestration can obtain in the Chancery Division of the High Court an account of the surplus profits in the hands of the first sequestrator, and an order for payment out of them of his debt³.

1 *Sturgis v Bishop of London* (1857) 7 E & B 542; and see PARA 917 post.

2 *R v Bishop of London* (1822) 1 Dow & Ry KB 486.

3 *Cuddington v Withy* (1818) 2 Swan 174.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/897. Continuance of sequestration.

897. Continuance of sequestration.

A writ of sequestration is a continuing execution and remains in force, without reference to the date on which it is nominally returnable, until the debt and costs to be levied under it are realised, or until the bishop is ruled to return it, in which case the return puts an end to the writ. If the bishop to whom the writ is directed dies during its continuance his successor is bound to return it¹. Where a sequestration is granted to levy the amount of a mortgage debt and the mortgaged property is foreclosed and sold for a sum not sufficient to satisfy the debt, the sequestration will not be set aside but will continue for the levy of the balance².

The sequestration need not be published before the day on which the writ is nominally returnable³. Until the full amount is levied the return of the writ should not be moved for, but an account should be demanded from the bishop from time to time as to the amounts which he has levied⁴. If the bishop returns the writ before the execution is satisfied it will be sent back to him to remove the return and to certify instead what has been done under it⁵. The sequestrator ought to make payment to the creditor at the earliest possible moment⁶. If a judgment creditor who has obtained a sequestration becomes bankrupt his trustee in bankruptcy succeeds to his rights under the sequestration⁷.

1 *Marsh v Fawcett* (1795) 2 Hy Bl 582; *Phillips v Berkeley* (1836) 5 Dowl 279; *Phelps v St John* (1855) 10 Exch 895.

2 *Long v Williams* (1872) 26 LT 878.

3 *Bennett v Apperley* (1827) 6 B & C 630.

4 *Marsh v Fawcett* (1795) 2 Hy Bl 582. The incumbent cannot institute an action in the Chancery Division of the High Court for an account, as it is a matter for the court out of which the writ of sequestration has issued: *Williams v Ivimey* (1870) 23 LT 100.

5 *Disney v Eyre* (1831) Alc & N 34; *Alderton v St Aubyn* (1840) 6 M & W 150.

6 *Re Sanders v Penlease* (1859) 1 LT 54.

7 *Re Iveson, ex parte Hale* (1835) 1 Deac 87.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/898. Appointment of receiver.

898. Appointment of receiver.

A receiver may be appointed where the right to the sequestration is disputed¹, and on the application of a second incumbrancer where a third incumbrancer has obtained sequestration².

¹ *Silver v Bishop of Norwich* (1816) 3 Swan 112n. A receiver of the profits of a benefice will not be appointed where no sequestration has issued: *McCurdy v Chichester* (1837) 2 Jo Ex Ir 358.

² *White v Bishop of Peterborough* (1818) 3 Swan 109.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/899. Subsequent sequestration.

899. Subsequent sequestration.

If, during a sequestration in pursuance of a writ, the incumbent is suspended and a sequestration is issued under the suspension, the suspension deprives not only the incumbent, but also his creditors, of any right to the profits of the benefice, and the second sequestration accordingly overrides the first¹.

¹ *Bunter v Cresswell* (1850) 14 QB 825 at 830.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/900. Return to the writ.

900. Return to the writ.

The return to a writ of sequestration must not only set forth accounts of the sums received but must also state that no other sums have been received by the bishop under the sequestration¹. A bishop who has succeeded since the issue of a writ can only be called upon to return what has been levied since he came into office, and when the creditor's solicitor in the cause has been changed the bishop cannot be called upon to make a return until notice of the change has been served upon him². On the incumbent's application the court will refer the accounts to a master to ascertain whether the deductions contained in them ought to be allowed³. When the accounts have been filed and the writ paid off, however, the incumbent cannot, some years afterwards, require the bishop to certify what has been done under the writ⁴.

1 *Elchin v Hopkins* (1838) 7 Dowl 146.

2 *Phillips v Berkeley* (1836) 5 Dowl 279.

3 *Dawson v Symonds* (1848) 12 QB 830; *Morris v Phelps* (1850) 4 Exch 895. The incumbent cannot obtain an account against the judgment creditor and the sequestrator by proceedings in equity: *Williams v Ivimey* (1870) 23 LT 100.

4 *Billing v St Aubyn* (1861) 7 Jur NS 775.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(ii) Sequestration for Debt or on Bankruptcy/901. Bishop's powers.

901. Bishop's powers.

Where either on the bankruptcy of an incumbent¹, or under a judgment recovered against him, a sequestration of his benefice issues² and continues for six months, the bishop, after the expiration of that six months and so long as the sequestration continues, is to take order for the performance of the services of the church of the benefice, and may appoint and license for that purpose one or more curates or additional curates, as the case may require, with such stipend in each case, specified in the licence, as the bishop thinks fit³. Every such stipend is to be paid by the sequestrator out of money coming to his hands under the sequestration so long as it continues, in priority to all sums payable by virtue of the bankruptcy or the judgment under which the sequestration has issued, but not in priority of liabilities in respect of charges on the benefice⁴. Where any such sequestration continues for more than six months and it appears to the bishop that scandal or inconvenience is likely to arise from the incumbent continuing to perform the services of the church while the sequestration continues, the bishop may, after the expiration of the six months, inhibit the incumbent from performing any services of the church within the diocese during the continuance of the sequestration⁵.

¹ See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

² The profits do not vest in the trustee in bankruptcy until sequestration is issued: *Hopkins v Clarke* (1864) 5 B & S 753, Ex Ch. A sequestration may be issued notwithstanding that the incumbent has obtained an order of discharge under the bankruptcy (*Re Meredith, ex parte Chick* (1897) 11 ChD 731, CA), and, if issued previously, it will continue in force while any debts remain to be satisfied, in spite of the incumbent's obtaining an order of discharge (*Re Lawrence* [1896] P 244; *Lawrence v Adams* (1896) 75 LT 410). The official receiver can agree to a relaxation or withdrawal bankruptcy can authorise him to accept the sum: *Re Barratt* (1906) 22 TLR 427.

³ Sequestration Act 1871, s 1. The Pluralities Act 1838, ss 107-109 apply: Sequestration Act 1871, s 2, Schedule, Part I.

⁴ *Ibid* s 3. The Pluralities Act 1838, ss 75, 76, 97, 102, apply to curates so appointed: Sequestration Act 1871, s 4, Schedule, Part II. See also the Benefices (Ecclesiastical Duties) Measure 1926, s 14 (see PARA 712 ante), and *Baylis v Bishop of London* [1913] 1 Ch 127, CA.

⁵ Sequestration Act 1871, s 5. He may at any time withdraw the inhibition: s 5. As to inhibition for an ecclesiastical offence, see PARA 1377 post.

UPDATE

894-901 Sequestration for Debt or on Bankruptcy

A writ of sequestration in respect of the profits of a benefice cannot be issued by any court (1) for the purpose of obtaining satisfaction of a debt owed by the incumbent of the benefice, or (2) by reason of the bankruptcy of the incumbent; (3) for the purpose of applying the profits where the incumbent is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to the benefice: Church of England (Miscellaneous Provisions) Measure 1992 s 1(2). As to transitional provisions in respect of sequestration see s 18.

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

901 Bishop's powers

TEXT AND NOTE 3--1871 Act s 1 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt II. 1871 Act s 2 amended: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 4--Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iii) Sequestration in Ecclesiastical Proceedings/902. Sequestration on suspension.

(iii) Sequestration in Ecclesiastical Proceedings

902. Sequestration on suspension.

Where an incumbent is censured with suspension from exercising or performing the rights and duties of his office¹, he loses, during its continuance, the right to the profits of the benefice². The court will direct sequestration of them, and the sequestered profits belong to the bishop who must, either in his own person or by a substitute paid out of the profits, discharge the duties of the benefice during the suspension³. The sequestration is enforceable by the bishop and not by the court which has directed it⁴.

1 As to the censure of suspension, see PARA 1378 post.

2 *Morris v Ogden* (1869) LR 4 CP 687.

3 *Re Thakeham Sequestration Moneys* (1871) LR 12 Eq 494.

4 *Trower v Hurst* (1847) 1 Rob Eccl 597.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iii) Sequestration in Ecclesiastical Proceedings/903. Sequestration after monition.

903. Sequestration after monition.

Sequestration will not ordinarily be issued by an ecclesiastical court until a monition to show cause against it has been decreed and the incumbent has failed to appear or to show cause¹.

¹ *Abbitt v Gurney* (1843) 2 Notes of Cases 75; *Bonaker v Evans* (1850) 16 QB 162, Ex Ch.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/904. Sequestration under mortgage for providing house of residence.

(iv) Sequestration on Incumbent's Default

904. Sequestration under mortgage for providing house of residence.

If, after a mortgage has been effected under the Clergy Residences Repair Act 1776¹ or any of the Acts extending the provisions of that Act, for the purpose of providing a house of residence for a benefice, the incumbent makes default in payment of either the principal or the interest on the mortgage, or if he neglects to insure and keep insured the house and other glebe buildings against fire after completion, the bishop may sequester the profits of the benefice until that payment or insurance is made².

¹ See the Clergy Residences Repair Act 1776, s 1, and PARA 1146 post.

² Ibid s 6; Parsonages Act 1838, s 2 (repealed); *Bluck v Hodgson* (1847) 5 Notes of Cases 167. As to insurance, see the Repair of Benefice Buildings Measure 1972, s 12, and PARA 1182 post.

UPDATE

904 Sequestration under mortgage for providing house of residence

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/905. Sequestration for non-residence and unlawful trading.

905. Sequestration for non-residence and unlawful trading.

Where it appears to a bishop that the incumbent of a benefice in the diocese, not having a licence to reside elsewhere than in the house of residence of the benefice, nor having a legal cause of exemption from residence¹, does not sufficiently² reside on the benefice, his residence there may be enforced by monition and, if necessary, by an order, instead of or after proceedings for the statutory penalties for non-residence³, and in case of non-compliance with the order the bishop may sequester the profits of the benefice until it is complied with or until sufficient reasons for non-compliance are stated and proved⁴. The profits of the benefice of an incumbent who has been suspended for unlawful trading⁵ are liable to sequestration in a similar manner⁶.

The incumbent may, within one month after service upon him of the order for sequestration, appeal to the archbishop of the province, who must make such order as may appear to him just in relation to the sequestration, or to the sequestered profits, for the return of them or of any part of them to the incumbent, or to a sequestrator appointed at the suit of a creditor or otherwise, but the sequestration is to be in force during the appeal⁷.

If, in obedience to a monition or order requiring him to reside, whether a sequestration has issued or not, the incumbent begins to reside, but within twelve months after commencing residence wilfully absents himself from the benefice for one month, either at one time or in the aggregate, the bishop may, without any further monition or order, sequester and apply the profits of the benefice in the same manner as in the case of a sequestration to enforce an original order for residence, and may proceed in that manner in similar circumstances as often as occasion requires⁸.

1 Inability to reside in consequence of being imprisoned for a crime has been held to be not a legal cause of exemption from residence: *Ex parte Bartlett* (1848) 12 QB 488; *Re Bartlett* (1848) 3 Exch 28 at 33.

2 For the requirements as to residence, see PARA 692 ante.

3 As to the enforcement of residence, see PARA 697 ante.

4 Pluralities Act 1838, s 54. For the order in which the bishop, in his discretion, is to apply the sequestered profits, after deducting the necessary expenses of serving the cure, see s 54.

5 As to unlawful trading, see *ibid* s 29, and PARA 683 ante.

6 *Ibid* s 31. The only difference is that no part of the profits is to be paid to the suspended incumbent or in satisfaction of a sequestration at the suit of a creditor: s 31.

7 *Ibid* s 54. See also ss 111-113. The monition need not be preceded by a citation, but the instrument of sequestration ought to recite the delinquency in respect of which it issues and the bishop's adjudication on it, and sequestration must not issue without giving the incumbent an opportunity of showing cause why it should not issue: *Bonaker v Evans* (1850) 16 QB 162, Ex Ch; *Bartlett v Kirwood* (1853) 2 E & B 771.

8 Pluralities Act 1838, s 56. In such case the incumbent has a similar right of appeal to the archbishop as on a sequestration to enforce an original order for residence: s 56. If sequestration continues for a year or is incurred twice in two years the benefice becomes void: s 58.

UPDATE

905 Sequestration for non-residence and unlawful trading

NOTE 8--1838 Act s 58 amended: Patronage (Benefices) Measure 1986 Sch 4 para 1, Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/906. Sequestration for possession of house of residence etc.

906. Sequestration for possession of house of residence etc.

In certain cases of non-residence of the incumbent the bishop may enforce delivery of possession of the house of residence to a curate by sequestration, and may enforce payment of the taxes, rates and assessments in respect of it by monition and sequestration¹.

¹ Pluralities Act 1838, ss 93, 94: see PARA 717 ante.

UPDATE

906 Sequestration for possession of house of residence, etc

TEXT AND NOTE--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/907. Sequestration for paying curate's stipend.

907. Sequestration for paying curate's stipend.

If an incumbent wilfully neglects or refuses to pay the stipend or arrears of stipend of a curate, the bishop may enforce payment by monition and sequestration of the profits of the benefice¹.

¹ Pluralities Act 1838, ss 83, 90; *Sharpe v Bluck* (1847) 10 QB 280.

UPDATE

907 Sequestration for paying curate's stipend

TEXT AND NOTE--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/908. Sequestration after inhibition.

908. Sequestration after inhibition.

Where an incumbent is inhibited¹, the bishop may assign part of the stipend of the benefice to the person appointed to perform the duties of the incumbent and may sequester the profits of the benefice for the payment of the stipend so assigned².

¹ ie under the Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (b): see PARA 1377 post.

² Ibid s 71 (4). Sequestrators appointed under the Benefices (Ecclesiastical Duties) Measure 1926 have power, with the bishop's consent, to let the house of residence: see the Benefices (Sequestrations) Measure 1933, s 4. The provisions of the Benefices (Ecclesiastical Duties) Measure 1926 which gave the bishop power to sequester were repealed by the Incumbents (Discipline) Measure 1947, s 27 (repealed). The Ecclesiastical Jurisdiction Measure 1963 contains no exact equivalent.

UPDATE

908 Sequestration after inhibition

TEXT AND NOTE 2--Now the bishop may assign such part as he thinks fit of any one or more of the following, ie the guaranteed annuity, the personal grant, if any, and the profits of the benefice: Endowments and Glebe Measure 1976 Sch 5.

1933 Measure repealed: Endowments and Glebe Measure 1976 Sch 8.

The 1963 Measure s 71 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(iv) Sequestration on Incumbent's Default/909. Mode of proceedings by monition and sequestration.

909. Mode of proceedings by monition and sequestration.

In proceedings by monition and sequestration for non-residence and for non-payment of curates, the monition issues under the bishop's hand and seal and is served personally on the incumbent, and immediately after service is returned into the consistory court of the diocese, where it is filed with an affidavit of service¹. The incumbent may thereupon show cause by affidavit or otherwise why a sequestration should not issue according to the terms of the monition, and if he does not show sufficient cause to the contrary within the time assigned by the monition the sequestration issues under the court's seal and is served and returned into the registry of the court in the same manner as is required with respect to the monition². Where a monition has been served on an incumbent requiring him to reside on his benefice, no sequestration is to issue until an order requiring him to proceed and reside upon his benefice within thirty days has been served upon him in the same manner as is required with respect to the monition³.

1 Pluralities Act 1838, s 112. For the mode of service where the incumbent cannot be found or is out of England, see s 112; Pluralities Acts Amendment Act 1885, s 15; *Green v Cobden* (1836) 2 Bing NC 627.

2 Pluralities Act 1838, s 112.

3 Ibid s 113.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(v) Sequestration during Vacancy/910. Sequestration on avoidance of benefice.

(v) Sequestration during Vacancy

910. Sequestration on avoidance of benefice.

On a benefice becoming void sequestration is issued, usually to the churchwarden¹, to receive the profits and pay out of them the cost of serving the cure during the vacancy², and to account for the net balance to the succeeding incumbent³, who may maintain an action against the sequestrators for this balance⁴. If the profits received by the sequestrators during the vacancy are not sufficient to pay the assigned stipend or stipends, the deficiency is to be paid by the succeeding incumbent out of the profits of the benefice, and the bishop may, if necessary, enforce the payment by monition and sequestration of these profits⁵.

Where the bishop has declared a 'suspension period'⁶, he must appoint sequestrators during that period⁷.

1 Sequestration is also frequently issued to the rural dean: see PARA 525 ante.

2 See PARA 932 post.

3 Ayl Par 495, 496; Gib Cod 749; Tithe Act 1536, ss 1-3; Pluralities Act 1838, s 100.

4 *Jones v Barrett* (1724) Bunb 192; *Russell v Lay* (1897) 66 LJQB 582. Where a benefice is vacant for many years together owing to being of such small value that no clergyman fit to serve the cure will accept it, the sequestration is committed either to the curate in charge alone, or to him and the churchwardens jointly: Johnson, Clergyman's Vade Mecum 131.

5 Tithe Act 1536, s 8; Pluralities Act 1838, s 101.

6 Ie under the Pastoral Measure 1968, s 67: see PARA 813 ante.

7 Ibid s 68 (1). For the powers of sequestrators and the management of benefice property during a suspension period, see s 68, Sch. 7, and PARA 815 ante.

UPDATE

910 Sequestration on avoidance of benefice

TEXT AND NOTES--During the vacancy of a benefice and otherwise where the profits of a benefice are to be sequestered, the churchwardens of every parish comprised in the benefice and the rural dean and such other person as the bishop of the diocese appoints, if he considers it desirable to do so, are to be the sequestrators of the benefice and any rule of law requiring the bishop to issue a writ of sequestration on a benefice becoming vacant ceases to have effect: Church of England (Miscellaneous Provisions) Measure 1992 s 1(1). In the case of a benefice in respect of which a team ministry is established, s 1(1) has effect as if for the words 'rural dean' there is substituted 'ministers in the team ministry', provided that the bishop of the diocese concerned, if he considers that any of the ministers in the team ministry should not be a sequestrator of the benefice, may direct accordingly: s 1(1A), proviso, added by Team and Group Ministries Measure 1995 s 17. 'Minister' in relation to a team ministry means a person (1) who is a vicar in a team ministry, or (2) to whom a special responsibility for pastoral care in respect of a part of the benefice has been assigned

under the Pastoral Measure 1983 s 20(8A) (see PARA 870), that part of the benefice not being a part in respect of which a special cure of souls has been assigned to a vicar in the team ministry by a scheme under that Measure or by his licence from the bishop (see PARA 690): 1992 Measure s 1(1B), as added.

NOTE 3--Acts repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTE 5--Repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 6--Now Pastoral Measure 1983 s 67; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 21.

NOTE 7--Now 1983 Measure s 68 Sch 7; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 paras 22, 25.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(v) Sequestration during Vacancy/911. Sequestrators' powers during vacancy.

911. Sequestrators' powers during vacancy.

In addition to the payment of the cost of serving the cure¹ the sequestrators² may make provision for (1) the proper care, custody and upkeep of the house of residence of the benefice and of any land belonging to or occupied with the house; (2) the cost of professional assistance required by them in connection with their duties; and (3) the payment of interest on money borrowed by them in the exercise of their duties³. Subject to the rights of an outgoing incumbent or the representatives of a deceased incumbent, the sequestrators may sell the produce of any garden or other land belonging to the house of residence and treat the proceeds as part of the income of the benefice⁴.

1 See PARA 910 ante. As to the sequestrators' powers during a 'suspension period', see PARA 815 ante.

2 Certain additional powers are exercised by sequestrators appointed where the bishop has suspended the filling of a vacant benefice under the Pastoral Measure 1968, s 67: see s 68, Sch. 7, and PARA 815 ante.

3 Benefices (Sequestrations) Measure 1933, s 2 (1). These powers are, however, exercisable only with the approval of the bishop who may, at his discretion, give a general approval of the powers or some of them being exercised or sanction only particular items of expenditure: s 2 (2) (i). Where he thinks it desirable to give directions, the powers must be exercised in the manner and to the extent which he directs: s 2 (2) (ii). He may delegate his powers so far as they relate to benefices within a particular archdeaconry to the archdeacon of that archdeaconry, and may revoke the delegation: s 2 (3). References to the bishop in the Benefices (Sequestrations) Measure 1933 are, during a vacancy of the see, deemed to refer to the guardian of the spiritualities of the see (as to whom see PARA 489 ante): Vacancies in Sees Measure 1959, s 5 (1). During such a vacancy an archdeacon to whom the powers have been delegated may continue to exercise the powers unless the guardian of the spiritualities of the see revokes the delegation: s 5 (2).

4 Benefices (Sequestrations) Measure 1933, s 2

UPDATE

911 Sequestrators' powers during vacancy

TEXT--The sequestrators may be authorised by the bishop, with the Church Commissioners' consent, to grant a lease of parsonage land: Endowments and Glebe Measure 1976 s 38(2).

NOTE 2--Now Pastoral Measure 1983 ss 67, 68 Sch 7; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 paras 21, 25.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(v) Sequestration during Vacancy/912. Apportionment of income during vacancy.

912. Apportionment of income during vacancy.

If any part of the income of a vacant benefice is paid by or through the Church Commissioners the sequestrators may, by notice¹ addressed to the commissioners, require that money representing income which has accrued partly during the vacancy and partly during the succeeding incumbency is to be apportioned as between the period of the vacancy and that of the succeeding incumbency².

1 The notice may be given during the vacancy or afterwards and must be given at least seven days before the date on which money to be apportioned is payable by the commissioners: Benefices (Sequestrations) Measure 1933, s 3 (2).

2 Ibid s 3 (1); Church Commissioners Measure 1947, s 18 (2). On receiving the notice duly given the commissioners must effect the apportionment required and pay the money apportioned to the period of the vacancy to the sequestrators, whose receipt is a valid discharge: Benefices (Sequestrations) Measure 1933, s 3 (3).

UPDATE

912 Apportionment of income during vacancy

TEXT AND NOTES--Replaced. Except where a period of suspension of presentation follows, whether immediately or after an interval, a period during which the benefice has been vacant, at the close of the sequestration the sequestrators must pay the balance in their hands to the Church Commissioners for allocation to the income account of the diocesan stipends fund: Endowments and Glebe Measure 1976 s 38(3) (amended by the Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 16; and the Dioceses, Pastoral and Mission Measure 2007 s 63(2)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/913. Bishop in possession.

(vi) Parties' Rights during Sequestration

913. Bishop in possession.

The issue of a warrant of sequestration puts the bishop in possession of the benefice and its profits, except for the house of residence¹. Where the profits of a benefice are sequestrated² and the benefice is dissolved by a pastoral scheme³, the bishop may, subject to the provisions of the scheme, give directions as to the disposal of the balance in the sequestrators' hands⁴.

1 *Pack v Tarpley* (1839) 9 Ad & El 468.

2 Ie other than under the Pastoral Measure 1968, s 68: see PARA 815 ante.

3 As to pastoral schemes, see PARA 856 et seq ante.

4 Pastoral Measure 1968, s 70. The bishop's directions have effect notwithstanding anything in the Tithe Act 1536 (see PARA 910, ante): Pastoral Measure 1968, s 70.

UPDATE

913 Bishop in possession

TEXT AND NOTES 2-4--Replaced. See Endowments and Glebe Measure 1976 s 38(3); and PARA 912.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/914. Sequestrator's position.

914. Sequestrator's position.

The sequestrator is a bailiff or agent to the bishop, and gives security for duly accounting for the money received by him. His office does not pass to his executors, administrators or assigns¹. He is bound to provide out of the profits of the benefice for the repairs of the house of residence and glebe buildings and for their reinstatement in case of fire, as well as for the performance of divine service; in fact, for all outgoings which are inseparable from the benefice². A sequestrator who has been appointed merely to secure payment to curates is not a necessary party to an action to recover arrears of an annuity charged on the benefice³.

1 *Harding v Hall* (1842) 10 M & W 42 at 50, 52; Watson, Clergyman's Law (4th Edn) 308; Sequestration Act 1849, s 2; *Noble v Reast* [1904] P 34 at 38, 39.

2 As to the sequestrator's duties in connection with the repair of benefice buildings, see the Repair of Benefice Measure 1972, s 26, and PARA 1166 note 1 post. As to his powers as sequestrator during a vacancy, see PARA 911 ante, and for his powers during a suspension of presentation, see PARA 815 ante.

3 *Stannus v Robinson* (1837) 2 Jo Ex Ir 498.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/915. Proceedings by sequestrator.

915. Proceedings by sequestrator.

A sequestrator may bring an action, levy a distress and take any other proceedings in his own name as sequestrator of the benefice, without further description, for recovering any profits of the benefice, either against the incumbent himself or against third parties to the same extent as the incumbent might have done if the benefice had not been under sequestration; but in the case of a sequestration issued at the instance of a creditor he is not bound to begin any such proceedings until security to his satisfaction is given by the creditor for indemnifying him and the bishop or other Ordinary, or the court by whom he was appointed, from all costs, charges and expenses in connection with the proceeding¹.

¹ Sequestration Act 1849, s 1. The expense of the security is to be deducted or allowed out of any money received by the creditor by virtue of the proceeding: s 1.

UPDATE

915 Proceedings by sequestrator

NOTE 1--1849 Act s 1 amended: Church of England (Miscellaneous Provisions) Measure 1992 Sch 3. Provisos relating to the sequestrator only being able to bring proceedings to the same extent as the incumbent might have done, and to sequestration issued at the instance of a creditor, are repealed: 1992 Measure Sch 4 Pt II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/916. Profits received by sequestrator.

916. Profits received by sequestrator.

The payment to a sequestrator by the party liable thereto of any profits of the benefice, or dues or fees or rent issuing out of land of the benefice, payable to the incumbent, effectually discharges the party from all liability to the incumbent in respect of them¹. A sequestrator is entitled to receive, as part of the profits of a benefice, the income of a fund bequeathed in augmentation of the benefice², but a sequestration does not extend to rent previously accrued or to arrears of tithes³.

1 Sequestration Act 1849, s 2.

2 *Re Parker's Charity* (1863) 32 Beav 654.

3 *Waite v Bishop* (1834) 1 Cr M & R 507.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/917. Priority of sequestrations.

917. Priority of sequestrations.

A sequestration issued under the Pluralities Act 1838¹ has priority over all other sequestrations except a sequestration under the Clergy Residences Repair Act 1776² which has been previously issued³.

1 See pars. 905 et seq ante.

2 See PARA 904 ante.

3 Pluralities Act 1838, s 110.

UPDATE

917 Priority of sequestrations

TEXT AND NOTES--1838 Act s 110 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/918. Appointment of curates during sequestration.

918. Appointment of curates during sequestration.

Where a benefice is under sequestration, except for the purpose of providing a house of residence¹, the bishop is empowered and, if the incumbent does not perform the duties of the benefice, is required to appoint and license one or more curates to it, with stipends payable by the sequestrator out of the profits of the benefice².

¹ See PARA 906 ante.

² Pluralities Act 1838, s 99. As to stipends, see the Benefices (Ecclesiastical Duties) Measure 1926, s 14, and PARA 712 ante.

UPDATE

918 Appointment of curates during sequestration

TEXT AND NOTES--1838 Act s 99 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/919. Service of cure by incumbent.

919. Service of cure by incumbent.

The sequestration of a benefice does not of itself interfere with the service of the cure by the incumbent or with his duty to reside on the benefice¹. If the sequestration remains in force for more than six months, however, and scandal or inconvenience appears likely to arise from the incumbent continuing to perform the service of the church, the bishop may inhibit him².

1 *Doe d Rogers v Mears* (1774) 1 Cowp 129; *Lawrence v Edwards* [1891] 1 Ch 144 at 149, 150, per Chitty J.

2 See PARA 901 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/920. Right of presentation during sequestration.

920. Right of presentation during sequestration.

While a benefice is under sequestration the incumbent is incapable of presenting or nominating to a vacant benefice of which he is patron in right of the sequestered benefice, and the right of so presenting or nominating is to be exercised by the bishop of the diocese in which the vacant benefice is situate¹. The incumbent of a benefice under sequestration is not precluded, however, from joining with the parochial church council in appointing the parish clerk².

1 Sequestration Act 1891, s 6.

2 *Lawrence v Edwards* [1891] 1 Ch 144. As to parish clerks, see PARA 558 ante.

UPDATE

920 Right of presentation during sequestration

TEXT AND NOTE 1--Repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(6) SEQUESTRATION OF BENEFICES/(vi) Parties' Rights during Sequestration/921. Incumbent's position.

921. Incumbent's position.

While a benefice is under sequestration the incumbent cannot accept or be instituted or licensed to any other benefice or preferment the holding of which would avoid or vacate the sequestered benefice except with the written consent of the bishop of the diocese in which the sequestered benefice is situate and of the sequestrator¹.

¹ Sequestration Act 1871, s 7.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/922. Modes and effect of avoidance.

(7) AVOIDANCE OF BENEFICES

922. Modes and effect of avoidance.

A benefice is avoided¹ by death², resignation³, exchange⁴, cession⁵, declaration of avoidance by the bishop⁶ and deprivation⁷, and in certain circumstances a benefice is deemed to be vacated on the coming into operation of any provision of a pastoral scheme⁸.

The incumbent's interest in the profits, emoluments and property of the benefice ceases on the day when he vacates it; and his successor, when admitted, becomes entitled to them as from that day, so far as they have not been applied in providing for the service of the cure of souls and for the costs of sequestration during the vacancy⁹.

1 Co Litt 120a.

2 See PARA 923 post.

3 See PARAS 924-926 post.

4 See PARAS 927-929 post.

5 See PARA 930 post.

6 See PARA 737 ante, 1373 post.

7 See PARA 931 post.

8 See the Pastoral Measure 1938, s 24 (2), and PARA 882 ante.

9 Tithe Act 1536, s 1; *Farchild v Gayre* (1650) Cro Jac 63; *Halton v Cove* (1830) 1 B & Ad 538. As to sequestration during the vacancy, see PARAS 910, 911 ante; and as to the performance of the duties, see PARA 932 post.

UPDATE

922 Modes and effect of avoidance

NOTE 8--Now Pastoral Measure 1983 s 25(2).

TEXT AND NOTE 9--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/923. Death.

923. Death.

Where an incumbent farms glebe land of the benefice himself and dies after manuring and sowing the land sowing the land with corn or grain at his own charge and before harvest, the crops sown form, as emblements, part of his personal estate¹.

If at his death the incumbent resides in a house of residence annexed to the benefice his widow may continue to occupy the house with its curtilage and garden for a further period of not exceeding two calendar months².

1 Tithe Act 1536, s 4.

2 Pluralities Act 1838, s 36.

UPDATE

923 Death

NOTE 2--1838 Act s 36 now applies to the widower of a woman priest: Priests (Ordination of Women) Measure 1993 Sch 3 para 1.

1838 Act s 36 amended: SI 2005/3129.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/924. Mode of resignation.

924. Mode of resignation.

Resignation of benefice must be made to the bishop, either in person or by a deed attested by two witnesses, the presence of a notary public at the execution of the deed and his attestation of it being usual but not essential¹. Except on an exchange the resignation must be unconditional, but it may be made to take effect at a future fixed date². It may be made at the bishop's request to avoid scandal or legal proceedings, and the bishop may agree to postpone the declaration of the vacancy until a future fixed date³. The bishop is not obliged to accept the resignation⁴, and his acceptance of it need not be in any particular form or in writing⁵. It is implied if the resignation was made at his request⁵. The resignation takes effect upon its acceptance by the bishop, and cannot afterwards be revoked⁶.

1 Gib Cod 822, 823; Ayl Par 467-469; 3 Burn's Ecclesiastical Law (4th Edn) 540-544; *Reichel v Bishop of Oxford* (1887) 35 ChD 48 at 74, 75, CA; affd. (1889) 14 App Cas 259 at 265, HL. For forms of deeds of resignation, see *Reichel v Bishop of Oxford* (1887) 35 ChD 48 at 50, 51; Forms and Precedents.

2 *Reichel v Bishop of Oxford* (1889) 14 App Cas 259 at 268, 269, HL.

3 *Reichel v Bishop of Oxford* (1889) 14 App Cas 259, HL.

4 3 Burn's Ecclesiastical Law (4th Edn) 543; *Marchioness of Rockingham v Griffith* (1775) 7 Bac A br 246, Simony (D); *Fletcher v Lord Sondes* (1827) 3 Bing 501 at 544, HL, per Hullock B.

5 *Heyes v Exeter College, Oxford* (1806) 12 Ves 336; *Reichel v Bishop of Oxford* (1887) 35 ChD 48 at 69, CA; affd. (1889) 14 App Cas 259, HL.

6 *Fane's Case* (1607) Cro Jac 197; *Reichel v Bishop of Oxford* (1889) 14 App Cas 259, HL. Whether a resignation can be revoked before it is actually accepted by the bishop is not clear: see *Reichel v Bishop of Oxford* supra at 271, per Lord Herschell. After the resignation of a benefice has been held effectual in an action to which the patron was a party, the resigning incumbent cannot set up the invalidity of the resignation as against a successor instituted and inducted and inducted on the patron's presentation: *Magrath v Reichel* (1887) 57 LT 850, DC; affd. sub nom. *Reichel v Macgrath* (1889) 14 App Cas 665, HL.

UPDATE

924 Mode of resignation

TEXT AND NOTE 1--Where the incumbent of a benefice wishes to tender his resignation in writing it is no longer necessary for him to proceed by way of deed, but any written resignation must be tendered to the diocesan bishop concerned in the prescribed form and signed by the incumbent: Church of England (Miscellaneous Provisions) Measure 1992 s 11, Sch 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/925. Illegal agreements to resign.

925. Illegal agreements to resign.

The declaration against simony to be taken before admission to a benefice¹ contains a statement that the clergyman has not entered, nor, to the best of his knowledge and belief, has any person entered, into any bond, covenant or other assurance or engagement that he should at any time resign the benefice².

If an incumbent corruptly resigns his benefice or corruptly takes, directly or indirectly, any pension, sum of money or other benefit for resigning it, both the giver and taker are liable, on summary conviction, to a fine not exceeding £100³.

1 See PARA 834 ante.

2 Clerical Subscription Act 1865, s 2; Benefices Act 1889, s 1 (4), Schedule; Benefices Act 1898 (Amendment) MEASURE 1923, S. 5; Revised Canons Ecclesiastical, c 16 para 2. An agreement for resignation on the transfer of an advowson is invalid: see PARA 802 ante.

3 Simony Act 1588, s 7; Common Informers Act 1951, s 1. (1), (3), Schedule.

UPDATE

925 Illegal agreements to resign

TEXT AND NOTES 1, 2--The declaration against simony is no longer required: Church of England (Miscellaneous Provisions) Measure 1976 s 1, Schedule; Amending Canon No 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/926. Agreements to resign.

926. Agreements to resign.

An agreement entered into on the transfer of a right of patronage of a benefice for the resignation of a benefice in favour of any person is invalid¹, and if entered into in connection with a clergyman's presentation or appointment is simoniacal². Similarly a bond given to an inducement to him to resign is void³.

1 Benefices Act 1898, s 1 (3) (e). A clergyman who is knowingly party or privy to it is guilty of an offence in respect of which proceedings may be taken under the Ecclesiastical Jurisdiction Measure 1963, s 18 (see PARA 1362 post), Part IV (ss. 22-31); Benefices Act 1898, s 1 (5); Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 4.

2 *Fletcher v Lord Sondes* (1827) 3 Bing 501, HL. See PARA 833 ante.

3 *Young v Jones* (1782) 3 Doug KB 97.

UPDATE

926 Agreements to resign

TEXT AND NOTE 1--1898 Act s 1 repealed: Patronage (Benefices) Measure 1986 Sch 5.

NOTE 1--1963 Measure Pt IV repealed: Clergy Discipline Measure 2003. As to disciplinary proceedings for misconduct under the 2003 Measure see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/927. Consents to exchange.

927. Consents to exchange.

Two incumbents may exchange benefices with the consents of the patrons and of the bishops of the dioceses in which the benefices are situate¹. These consents are necessary because the exchange is effected by each incumbent resigning his own benefice and obtaining a presentation or collation to the other², and the bishop is not bound to accept the incumbent's resignation of the one, nor can the patron of the other be compelled to present or, in the case of the bishop being the patron, to collate such incumbent to it³.

1 It seems that the statutory power of the parochial church council to make representations and the restriction on the right of presentation imposed by the Benefices (Exercise of Rights of Presentation) Measure 1931, ss 2, 3, do not apply as there is no vacancy or impending vacancy. For a statement of the restrictions imposed by the Measure, see PARA 818 ante.

2 Watson, *Clergyman's Law* (4th Edn) 28.

3 Degge, *Parson's Counsellor*, Part I, c. 14, pp. 202-204. Where patrons have alternate turns of presentation to a benefice a presentation on an exchange of benefice is reckoned as a turn: *Keen v Denny* [1894] 3 Ch 169.

UPDATE

927 Consents to exchange

NOTE 1--1931 Measure ss 2, 3 replaced by the Patronage (Benefices) Measure 1986 ss 11-13 (see PARAS 818A.5-7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/928. Mode of exchange.

928. Mode of exchange.

Having obtained the bishop's licence of the bishops to treat of the exchange of benefices and having secured the patrons' concurrence, the two incumbents by an instrument in writing agree to exchange their benefices, and each of them resigns his benefice into the hands of the bishop for the purpose of the exchange and not otherwise¹. The exchange only takes effect if and when both incumbents are instituted and inducted, to the benefices taken in exchange. If one is instituted and inducted and the other is instituted but dies or refuses to complete the exchange before induction, the whole proceedings are void, and the survivor, or each of them, if both are living, will be restored to his former benefice².

¹ Gib Cod 821; Watson, Clergyman's Law (4th Edn) 28; 2 Burn's Ecclesiastical Law (4th Edn) 242, 243. The resignation may be made expressly conditional on the exchange being carried out, and may contain a proviso that it shall otherwise be void: Gib Cod 821. This condition, even if not actually inserted, is annexed by law to a resignation expressed to be made for the purpose of an exchange: Watson, Clergyman's Law (4th Edn) 28. It is otherwise, however, if no such purpose is expressed and the resignation is in terms absolute: *Rumsey v Nicholl* (1877) 2 CPD 294, CA.

² *Lord Cromwel's Case* (1601) 2 Co Rep 69b at 74b; *Commendam Case, Colt and Glover v Bishop of Coventry and Lichfield* (1617) Hob 140 at 152, Ex Ch; 2 Burn's Ecclesiastical Law (4th Edn) 243.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/929. Penalty for corrupt exchange.

929. Penalty for corrupt exchange.

If an incumbent corruptly exchanges his benefice or corruptly takes, directly or indirectly, any pension, sum of money or other benefit for exchanging it, both the giver and taker are liable on summary conviction to a fine not exceeding £100¹.

¹ Simony Act 1588, s 7; Common Informers Act 1951, s 1 (1), (3), Schedule. See also PARA 832 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/930. Cession.

930. Cession.

A benefice becomes void by cession if the incumbent is created a diocesan bishop or takes another benefice or ecclesiastical dignity or preferment which he cannot lawfully hold with it¹.

If any person accepts any benefice or cathedral preferment and the acceptance would contravene the provisions of the law relating to pluralities² he is deemed to vacate the office or offices previously held by him on admission to the benefice or preferment³.

¹ Termes de la Ley 103; *Edes v Bishop of Oxford* (1667) Vaugh 18; *Burder v Mavor* (1848) 1 Rob Eccl 614. For circumstances in which benefices and ecclesiastical preferments may lawfully be held in plurality, see PARA 852 et seq ante.

² Ie the Pastoral Measure 1968, s 88: see PARA 853 ante.

³ Ibid s 88 (4). See also *Apperley v Bishop of Hereford* (1833) 9 Bing 681; *Betham v Gregg* (1834) 10 Bing 352. An incumbent of a parish who presents himself to a district church thereby vacates the benefice of the parish: *Storie v Bishop of Winchester* (1850) 9 CB 62; (1856) 17 CB 653.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/931. Deprivation.

931. Deprivation.

A benefice becomes vacant by the deprivation of the incumbent: (1) where there has been simony in connection with his presentation, institution, collation or admission to the benefice, whether he was party to it or not¹; (2) where the incumbent is otherwise by law disqualified from holding it; or (3) where he has been guilty of some offence or conduct owing to which he is deprived of it by law or by a definite sentence².

If a person who is not in priest's orders is instituted or admitted to a benefice, he cannot retain possession of it³.

If the ordination of a clergyman has been corruptly procured, and within seven years thereafter he is admitted into a benefice, it becomes void upon his admission⁴.

1 See PARA 833 ante.

2 See PARA 1373 et seq post. For a bishop's power to declare a benefice vacant on the incumbent's incapacity, see PARA 737 ante; for his power so to declare on disciplinary grounds, see PARA 1373 post.

3 17 Vin Abr (Qa) pl. 27; *Costard v Winder* (1600) Cro Eliz 775; *Slader v Smalbrooke* (1664) 1 Lev 138, where a layman had obtained a benefice under forged letters of orders. While he holds the benefice his spiritual as well as temporal acts are, however, valid: *Costard v Winder* supra; *Hawke v Corri* (1820) 2 Hag Con 280 at 288.

4 Simony Act 1588, s 9.

UPDATE

931 Overriding power of High Court

TEXT AND NOTE 1--See now Domestic Proceedings and Magistrates' Courts Act 1978.

NOTE 4--Section 9 repealed in part: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/5. BENEFICES/(7) AVOIDANCE OF BENEFICES/932. Cure of souls and income during vacancy.

932. Cure of souls and income during vacancy.

When a benefice becomes vacant a sequestration is issued¹, and the duties are performed by a curate or curates appointed by the bishop², or, in default of any appointment by him, employed for the purpose by the sequestrators³. The fact that any stipendiary curate who is licensed to the parish continues in office, his stipend being paid out of the income of the benefice during the vacancy⁴, sometimes renders the employment of any other clergyman unnecessary. The bishop may assign to every curate appointed to perform the duties a stipend not exceeding the net annual income of the benefice⁵. The sequestrators pay the amount out of the profits of the benefice which come to their hands, and if these are not sufficient the incoming incumbent is liable to pay the balance out of the profits received by him⁶. If, on the other hand, the sequestrators have a balance of profits after paying for the services and for the costs of the sequestration, the new incumbent is entitled to it⁷.

1 Gib Cod 749.

2 Gib Cod 750; Pluralities Act 1838, s 99; Benefices (Ecclesiastical Duties) Measure 1926, s 19, Sch. 3 (repealed): see PARA 715 ante.

3 *Dakins v Seaman* (1842) 9 M & W 777.

4 See PARA 713 ante.

5 Benefices (Ecclesiastical Duties) Measure 1926, ss 14, 15. See PARA 712 ante.

6 Tithe Act 1536, ss 3, 8; Pluralities Act 1838, ss 100, 101; Benefices (Ecclesiastical Duties) Measure 1926, s 19, Sch. 3. An unlicensed clergyman not appointed by the bishop, but employed by the sequestrators, can recover a reasonable sum for his services from the new incumbent: *Dakins v Seaman* (1842) 9 M & W 777.

7 Tithe Act 1536, ss 1-3; *Halton v Cove* (1830) 1 B & Ad 538; *Betham v Gregg* (1834) 10 Bing 352; *Russell v Lay* (1897) 66 LJQB 582.

UPDATE

932 Cure of souls and income during vacancy

TEXT AND NOTE 2--1838 Act s 99 repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

TEXT AND NOTES 5-7--Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/933. The Book of Common Prayer.

6. CHURCH SERVICES

(1) REGULATION OF PUBLIC WORSHIP

(i) In general

933. The Book of Common Prayer.

Following limited liturgical reform in the reign of Henry VIII the accession of Edward VI in 1547 inaugurated a series of far-reaching changes designed to bring worship in the Church in England more into line with Reformation theology. The administration of Holy Communion to the people in both kinds was ordered by statute¹, and in 1549 the first English Book of Common Prayer was published and its use was made compulsory². Far-reaching as the liturgical changes effected by this prayer book were, it failed to satisfy the more extreme reformers, and three years later another prayer book was introduced³. The accession of Mary in 1553 led to the repeal of the Edwardian enactments and the reintroduction of the earlier Latin rite⁴, but in Elizabeth's reign the Second Prayer Book of Edward VI, with important changes, was brought into use again⁵. It was further revised in the reign of James I⁶, but its use was forbidden during the Commonwealth⁷. Upon the restoration of the monarchy the prayer book was reintroduced, in amended form, as the Book of Common Prayer of 1662⁸, despite puritan objections to many of its features⁹. This prayer book, with minor amendments¹⁰, has remained in constant use to the present day. Under the present legislation its use is authorised¹¹ and its continuing availability for use safeguarded¹².

1 Sacrament Act 1547, s 8: Royal Proclamation (Order of the Communion) dated March 1548. 'In both kinds' signifies both the bread and the wine.

2 Act of Uniformity 1548, s 1 (repealed). The prayer book is generally known as the First Prayer Book of Edward VI.

3 The Second Prayer Book of Edward VI. Its use was enforced by the Act of Uniformity 1551, s 4 (repealed).

4 1 Mar. sess. 2, c. 2 (Repeal of Acts) (1553) (repealed).

5 Act of Uniformity 1558, s 1 (repealed). This Act repealed 1 Mar. sess. 2, c. 2 (Repeal of Acts) (1553), and amended the Second Prayer Book of Edward VI. The resulting prayer book was less extreme than its predecessor of 1552, which had marked the zenith of protestant reform.

6 The changes effected by James I arose from the Hampton Court Conference attended by the King, in 1604. It was at this council that it was decided to embark upon a new translation of the Bible, and in 1611 the 'Authorised' or 'King James' version was published. In fact the version has no statutory or other formal authority, and the name 'authorised' probably arose from the king's close association with the translation which was undertaken, as the full title shows, 'by His Majesties speciall commandement'.

7 This was effected by a Parliamentary Ordinance of 1645, which replaced the prayer book with a Directory for the Public Worship of God in the Three Kingdoms.

8 Act of Uniformity 1662, s 1 (repealed). This followed the abortive deliberations of the Savoy Conference, set up by Warrant dated 25th March 1661, as promised by Royal Declaration dated 25th October 1660, and the more fruitful deliberations of the Convocations of Canterbury and York. References in this title to the Book of Common Prayer are references to this prayer are references to this prayer book of 1662, the long title of which is 'The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church according to the Use of the Church of England together with the Psalter or Psalms of David pointed as they are to be sung or said in Churches and the Form and Manner of Making Ordaining and Consecrating of

Bishops Priests and Deacons'. There is commonly bound up with it the Thirty-Nine Articles, or Articles of Religion, the full title of which is 'Articles agreed upon by the Archbishops and Bishops of both Provinces and the Whole Clergy in the Convocation holden at London in the year 1562 for the avoiding of Diversities of Opinions and for the establishing of Consent touching True Religion'. A table of kindred and affinity is also included.

9 Its introduction led to the resignation of nearly 2,000 ministers, who objected to the kneeling at Holy Communion, the retention of the surplice, the use of the sign of the Cross at baptism etc.

10 As now printed the Book of Common Prayer incorporates amendments effected by eg the Calendar (New Style) Act 1750; Prayer Book (Tables of Lessons) Act 1871; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, ss 3-5 (repealed); Prayer Book (Miscellaneous Provisions) Measure 1965, s 3 (repealed); Prayer Book (Further Provisions) Measure 1968, ss 1 (1), (2), 3 (repealed). The repeal of the cited provisions of the Measures of 1664, 1965 and 1968 by the Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2, does not affect the amendments to the rubrics in the Book of Common Prayer effected by those Measures: s 6 (4), Sch. 3 para 4.

Further, the prayers for or referring to the Sovereign or other named members of the royal family have from time to time been updated by Order in Council made under the Act of Uniformity 1662, s 21 (repealed), and may henceforth be revised by royal warrant under the Church of England (Worship and Doctrine) Measure 1974, s 1 (7): see PARA 357 ante.

Other enactments affecting the Book of Common Prayer and the forms of service are the Act of Uniformity Amendment Act 1872 (repealed), although the shortened forms of Morning and Evening Prayer set out in the Schedule to that Act are saved by the Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 3, and Revised Canons Ecclesiastical, Canon B1 para 1 (b) (substituted by Amending Canon No. 3: see PARA 939 post); Revised Tables of Lessons Measure 1922 (see PARA 945 post); Holy Table Measure 1964 (repealed, but see Revised Canons Ecclesiastical, Canon F2, and PARA 966 post); Vestures of Ministers Measure 1964 (repealed, but see Revised Canons Ecclesiastical, Canon B8, and PARA 970 post); Prayer Book (Versions of the Bible) Measure 1965 (see PARA 945 post); Admission to Holy Communion Measure 1972 (see PARA 977 post).

11 See PARA 937 post.

12 See PARA 936 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/934. The principle of conformity.

934. The principle of conformity.

The clergy were formerly required to adhere strictly and exclusively to the forms of service contained in the Book of Common Prayer. All ministers¹ in all places of public worship were to use in the morning and evening prayers, in the celebration and administration of both sacraments², and in all other public and common prayer, the forms set forth in the Book of Common Prayer³, and no form or order of common prayers, administration of sacraments, rites or ceremonies was to be openly used other than what was prescribed in that book⁴. That principle of uniformity has in recent years been replaced by a principle of conformity⁵ in consequence of legislation repealing the old statutes⁶ and making provision for the authorisation of forms of service additional to those contained in the Book of Common Prayer⁷. Subject to a limited discretion allowed to ministers⁸ every minister must use only the authorised forms of service⁹. Deviation from the Book of Common Prayer is permitted only insofar as other forms of service are authorised, or insofar as a minister is allowed to exercise a discretion to vary the authorised forms. The declaration of assent which is required to be made by a clerk in holy orders at the time of ordination and on admission to a benefice includes a promise to use, in public prayer and administration of the sacraments, only the forms of service authorised or allowed by canon, which include the forms prescribed in the Book of Common Prayer¹⁰.

1 As to the duties of incumbents in relation to services, see PARA 698 et seq ante.

2 *Flemmings Case* (1584) 1 Leon 295. The two sacraments of the Gospel are Baptism and Holy Communion: Book of Common Prayer, Articles of Religion 25.

3 Act of Uniformity 1662, s 1 (repealed).

4 Ibid s 13 (repealed). The object of a Statute of Uniformity, as stated in the preamble to the Act of 1662, was to produce a universal agreement in the worship of Almighty God, an object which would be wholly frustrated if each minister, on his own view of the relative importance of the details of the service, were to be at liberty to omit, to add to or to alter any of those details: *Martin v Mackonochie* (1868) LR 2 PC 365 at 382, 383. Hence, in strictness a minister had no discretion to make any such variation, even by way of omitting words from a lesson directed to be read: Canons Ecclesiastical (1603) 14 (revoked); *Colefatt v Newcomb* (1705) 2 Ld Raym 1205; *Newbery v Goodwin* (1811) 1 Phillim 282. See also *Bennett v Bonaker* (1828) 2 Hag Ecc 25; *Bennett v Bonaker* (1830) 3 Hag Ecc 17. Some slight deviation would, however, be overlooked: see *Newbery v Goodwin* supra. For the discretion which the law allows to a minister today, see PARA 941 post. As to common prayers, see PARA 987 note 7 post.

5 Revised Canons Ecclesiastical, Canon B1 (substituted by Amending Canon No. 3) is entitled 'Of Conformity of Worship'.

6 Act of Uniformity 1662, s 20 (repealed); Statute Law (Repeal) Act 1969, confirming the Acts of Uniformity of 1548, 1551 and 1558 (all repealed).

7 See PARA 937 post.

8 See Revised Canons Ecclesiastical, Canon B5 (amended by Amending Canon No. 3), and PARAS 940, 941 post.

9 Ibid Canon B1 para 2 (substituted by Amending Canon No. 3, made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (1)): see also PARA 937 post.

10 Revised Canons Ecclesiastical, Canon C15 para 1 (1) (substituted by Amending Canon No. 4): see PARA 660 ante. A similar promise in respect of public prayer is made by deaconesses (see Canon D2 para 5, and PARA 760 ante) and readers (see Canon E5 para 4, and PARA 765 ante). Prior to the coming into force of the Church of England (Worship and Doctrine) Measure 1974 the declaration, under the Clerical Subscriptions Act 1865, ss 1, 4, promised to use the form in the Book of Common Prayer prescribed and none other, 'except so far as shall be

ordered by lawful authority': see Canon C15 para 1 (2) (as originally promulgated). The meaning of 'lawful authority' and the extent to which it might be invoked to justify deviation from the Book of Common Prayer was formerly the subject of controversy, especially after the rejection by Parliament of the proposed Prayer Book of 1928: see eg a memorandum on 'Lawful Authority' by Vaisey J in the Report of the Archbishops' Commission on the Canon Law of the Church of England (SPCK 1947) 215 et seq. Among the questions in dispute was that of the *jus liturgicum* of archbishops and bishops, whereby they might authorise, in some circumstances, what would otherwise have been unlawful. With the coming into force of the Church of England (Worship and Doctrine) Measure 1974, and the substitution in the Revised Canons Ecclesiastical by Amending Canon No. 3 of references to services authorised by canon or approved by the General Synod for references in earlier canons to forms prescribed by the Book of Common Prayer or sanctioned by lawful authority, the 'lawful authority' controversy may be said to be over. See, however, the power mentioned in PARA 940 post, to approve special forms of service.

As to the present extent of the bishop's *jus liturgicum* there has been some uncertainty. The question was much discussed during the period following the rejection of the proposed Prayer Book of 1928 (see *supra*), and also in connection with the revision of the canons (see eg the memorandum of Vaisey J referred to *supra* at 220). In *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441, [1958] 1 WLR 1183, it was held that the bishop's sanction for reservation of the sacrament was justified by the *jus liturgicum*; and in *Re St Peter and St Paul, Leckhampton* [1968] P 495 at 499, [1967] 3 All ER 1057 at 1060, it was held that, as the rubrics in the Series 2 Holy Communion service give no directions as to the method of reservation, it is at large and must come within the bishop's *jus liturgicum* and the discretion of the consistory court. See also Garth Moore, *An Introduction to English Canon Law* (1967) 63-65.

In *Rector and Churchwardens of Bishopwearmouth v Adey* *supra* at 446 and at 1190, and in *Re St Peter and St Paul, Leckhampton* *supra* at 499 and at 1060, reference was also made to the doctrine of necessity; see also Garth Moore, *An Introduction to English Canon Law* (1967) 64, 65, 69, 108, 150. The doctrine of necessity in the canon law was of a wider scope than in the common law (see *Dictionnaire de Droit Canonique*, 'Necessite'); but it is not clear whether the doctrine survived the Reformation (see PARA 308 *ante*); nor is it clear what place, if any, the doctrine in its narrower form holds in ecclesiastical law.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/935. Power to authorise forms of service.

935. Power to authorise forms of service.

The General Synod of the Church of England¹ may make provision by canon with respect to worship in the Church of England, including provision for empowering the General Synod to approve, amend, continue or discontinue forms of service², and may make provision by canon or regulations thereunder for any matter, except the publication of banns of matrimony³, to which any of the rubrics⁴ contained in the Book of Common Prayer⁵ relate⁶. Provision is, however, made to protect the special position of the Book of Common Prayer⁷. Any canon making any such provision, and any regulations made under any such canon, have effect notwithstanding anything inconsistent therewith contained in any of the rubrics of the Book of Common Prayer⁸.

No canon making any such provision may be submitted for the Queen's licence and assent unless it has been finally approved by the General Synod with a majority in each House of the synod of not less than two-thirds of those present and voting, and no regulation under any such canon, nor any approval, amendment, continuance or discontinuance of a form of service by the synod under any such canon has effect unless it has been finally approved by the synod with a similar majority in each House⁹. Further, every such canon, regulation, form of service or amendment must be such as in the synod's opinion is neither contrary to nor indicative of any departure from the doctrine of the Church of England¹⁰ in any essential matter¹¹, and the synod's final approval conclusively determines that the synod is of that opinion¹².

Without prejudice to the generality of the foregoing the General Synod may make provision by canon for empowering the convocations¹³, the archbishops and the diocesan bishops to approve forms of service for use on occasions for which no provision is made by forms of service contained in the Book of Common Prayer or approved by the General Synod or the convocations under canon¹⁴, and for empowering any minister to make and use minor variations in the forms of service contained in that book or approved by the General Synod, convocation, archbishops or bishops under canon and to use forms of service considered suitable by him on occasions for which no provision is made by any such form of service¹⁵. Any such canon must provide for requiring the forms of service and variations approved, made or used under it to be neither contrary to nor indicative of any departure from the doctrine of the Church of England in any essential matter¹⁶. Further, the General Synod may provide by canon that where a form of service is in course of preparation with a view to its submission to the synod for approval by the synod under canon, the archbishops may authorise that service in draft form to be conducted by a minister in the presence of a congregation consisting of such persons only as the archbishops may designate¹⁷.

1 As to the General Synod, see PARA 390 et seq ante.

2 Church of England (Worship and Doctrine) Measure 1974, s 1 (1) (a). 'Form of service' means any order, service, prayer, rite or ceremony whatsoever, including the services for the ordination of priests and deacons and the consecration of bishops and the catechism or form of instruction before confirmation: s 5 (2). The Measure extends to the whole of the provinces of Canterbury and York except the Channel Islands, but may be applied to the Channel Islands in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957 (see PARA 402 ante) in accordance with those Measures: Church of England (Worship and Doctrine) Measure 1974, s 7 (3). The Measure (together with Amending Canons Nos. 3, 4) comes into force on such day as the Archbishops of Canterbury and York appoint: s 7 (2). The power to make canons is exercisable before that day but no such canon comes into force before that date: s 7 (2) proviso. At the date (1st May 1975) at which this volume states the law no such day had been appointed, but it is understood that a day during the summer of 1975 is likely to be appointed, and the law in this volume is stated as if the Measure and the canons which have been made thereunder were in force.

3 Parliament thus reserves to itself the power to regulate the publication of banns. For the exercise of this power, see the Marriage Act 1949, ss 6-14, and PARA 1006 et seq post.

4 'Rubrics' of the Book of Common Prayer include all directions and instructions contained in it, and all its tables, prefaces, rules, calendars and other contents: Church of England (Worship and Doctrine) Measure 1974, s 5 (2). The name is derived from the red ink in which the rubrics are sometimes printed. No amendment or revocation of any of the rubrics effected by any Act or Measure repealed by the Measure of 1974 is affected by that repeal: s 6 (4), Sch. 3 para 4. The rubrics have the force of law: see PARA 955 post.

5 'Book of Common Prayer' means the book annexed to the Act of Uniformity 1662 (repealed) (ie the Book of Common Prayer of 1662, including the Ordinal) as amended by any Act or Measure or in accordance with the Church of England (Worship and Doctrine) Measure 1974, s 1 (7) (see PARA 357 ante): s 5 (2).

6 Ibid s 1 (1) (b).

7 See PARA 936 post.

8 Church of England (Worship and Doctrine) Measure 1974, s 1 (2).

9 Ibid s 3: see PARA 937 post. This applies also to canons under s 2 (1) relating to declarations of assent.

10 References to 'the doctrine of the Church of England' are to be construed in accordance with the statement contained in the Revised Canons Ecclesiastical, Canon A5, that that doctrine is grounded in the holy scriptures, and in such teachings of the ancient fathers and councils of the church as are agreeable to those scriptures, and that in particular that doctrine is to be found in the Articles of Religion, the Book of Common Prayer and the Ordinal: Church of England (Worship and Doctrine) Measure 1974, s 5 (1).

11 Ibid s 4 (1). This applies also to canons under s 2 (1) relating to declarations of assent.

12 Ibid s 4 (2).

13 As to the convocations, see PARA 442 et seq ante.

14 Church of England (Worship and Doctrine) Measure 1974, s 1 (5) (a): see PARA 940 post.

15 Ibid s 1 (5) (b): see PARAS 940, 941 post.

16 Ibid s 4 (3).

17 Ibid s 1 (6): see PARA 942 post.

UPDATE

935 Power to authorise forms of service

NOTE 2--The Measure has been extended to the Channel Islands by SI 1984/1689. The appointed day for the commencement of the Measure was 1 September 1975.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/936. Safeguards for position of the Book of Common Prayer.

936. Safeguards for position of the Book of Common Prayer.

The position of the Book of Common Prayer is protected by both general and local safeguards. The General Synod's powers¹ to provide by canon for the worship of the Church of England must be so exercised as to ensure that the forms of service² contained in the Book of Common Prayer continue to be available for use in the Church of England³.

If there is disagreement between the minister⁴ and the parochial church council as to which of the authorised forms of service⁵ (other than the services known as occasional offices⁶) are to be used in any church⁷ in a parish⁸, and so long as the disagreement continues, the forms in the Book of Common Prayer must be used unless other authorised forms of service were in regular use in that church during at least two of the four years immediately preceding the date when the disagreement arose and the parochial church council resolves that those other forms are to be used either to the exclusion of or in addition to the forms contained in the Book of Common Prayer⁹.

1 le under the Church of England (Worship and Doctrine) Measure 1974, s 1 (1): see PARA 935 ante.

2 For the meaning of 'form of service', see *ibid* s 5 (2), and PARA 935 note 2 ante.

3 *Ibid* s 1 (1). Thus the power to abolish, replace (or even, it seems, to amend) the Book of Common Prayer is exercisable only by Act or Measure, not by canon. For the meaning of 'Book of Common Prayer', see PARA 935 note 5 ante.

4 The canons use the term 'minister' where the Church of England (Worship and Doctrine) Measure 1974, s 1 (3), uses the term 'incumbent', which it defines, in s 5 (2), in the terms in which 'minister' is defined in the Church Representation Rules (see PARA 544 note 6 ante). It may be noted that the Church of England (Worship and Doctrine) Measure 1974, s 1 (4)-(6), uses the term 'minister' in relation to the person conducting a service.

5 le authorised by the Revised Canons Ecclesiastical, Canon B1 (substituted by Amending Canon No. 3): see PARA 937 post.

6 'Occasional offices' is not defined, but appears to mean services other than those (such as Holy Communion and Morning and Evening Prayer) which are held regularly, with particular reference to services in which the church's ministrations are offered to individual 'persons concerned' (see eg para 938 post).

7 'Church' includes any building or part of a building licensed by the bishop for public worship according to the rites and ceremonies of the Church of England: Revised Canons Ecclesiastical, Canon B3 para 1 (substituted by Amending Canon No. 3). The same definition appears in the Church of England (Worship and Doctrine) Measure 1974, s 5 (2).

8 As to the decision as to which authorised form is to be used, see the Revised Canons Ecclesiastical, Canon B3 para 1 (substituted by Amending Canon No. 3), and PARA 938 post.

9 *Ibid* Canon B3 para 2 (substituted by Amending Canon No. 3). This canon is required by the Church of England (Worship and Doctrine) Measure 1974, s 1 (3) (b). Revised Canons Ecclesiastical, Canon B3 paras 1, 2, apply to a guild church with the substitution of 'guild church' for 'church', 'vicar of the guild church' for 'minister', and 'guild church council' for 'parochial church council', but do not apply in relation to a cathedral which is a parish church nor to any part of a cathedral which is a parish church: Canon B3 paras 1-3 (substituted by Amending Canon No. 3). As to guild churches and cathedrals, see PARA 597 et seq, 610 et seq ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/937. Authorised forms of service.

937. Authorised forms of service.

The following forms of service¹ are authorised for use in the Church of England:

- 17 (1) the forms of service contained in the Book of Common Prayer²;
- 18 (2) the shortened forms of Morning and Evening Prayer set out in the Act of Uniformity Amendment Act 1872³.
- 19 (3) the form of the service authorised by royal warrant for use on the anniversary of the accession of the reigning sovereign⁴;
- 20 (4) any forms of service approved under specified canons⁵, subject to any amendments so approved⁶.

Every minister may use only these authorised services except so far as he may exercise the discretion allowed to him under the canons⁷.

The General Synod may (a) approve forms of service for use in the Church of England and amend any form of service which it approves, (b) approve the use of any such form for a limited period or without limit of period, (c) extend the period of use of any such form and discontinue any such form⁸. Any form of service or amendment of it so approved must be such as in the synod's opinion is neither contrary to nor indicative of any departure from the doctrine of the Church of England in any essential matter⁹, and no such approval, amendment, continuance or discontinuance has effect unless finally approved by the General Synod with a majority in each House of not less than two-thirds of those present and voting¹⁰.

Power was given to the convocations in 1965, and subsequently to the General Synod, to approve for experimental use for a period not exceeding seven years, with certain powers of extension and renewal, forms of service alternative to those prescribed by the Book of Common Prayer¹¹; but these forms could not be used in churches without the agreement of the parochial church council or, in the case of occasional offices, if any of the persons concerned objected beforehand¹². Under the provisions detailed above the General Synod now has power to give permanent approval to these forms¹³.

1 For the meaning of 'forms of service', cf. para 935 note 2 ante. The provisions set out in this paragraph were made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (1): see PARA 935 ante.

2 Revised Canons Ecclesiastical, Canon B1 para 1 (a) (substituted by Amending Canon No. 3). As to safeguards for the Book of Common Prayer, see PARA 936 ante.

3 Revised Canons Ecclesiastical, Canon B1 para 1 (b) (substituted by Amending Canon No. 3): see PARA 939 post.

4 Ibid Canon B1 para 1 (c) (substituted by Amending Canon No. 3). See the form of service authorised by royal warrant dated 26th July 1958, printed in the Book of Common Prayer immediately before the Articles of Religion.

5 I.e. under the Revised Canons Ecclesiastical, Canon B2 or orB4 substituted by Amending Canon No. 3): see infra, and PARA 940 post.

6 Ibid Canon B1 para 1 (d) (substituted by Amending Canon No. 3).

7 Ibid Canon B1 para 2. As to his discretion, see Canon B5 (amended by Amending Canon No. 3), and PARA 941 post.

- 8 Ibid Canon B2 para 1 (a)-(c) (substituted by Amending Canon No. 3).
- 9 Ibid Canon B2 para 1 (substituted by Amending Canon No. 3). As to doctrine, see PARA 935 note 10 ante.
- 10 Ibid Canon B2 para 2 (substituted by Amending Canon No. 3).
- 11 Prayer Book (Alternative and Other Services) Measure 1965, s 1 (repealed); Synodical Government Measure 1969, s 3 (2). This power has been exercised to approve for varying periods alternative services for eg Holy Communion (Series 1, 2 and 3), Morning and Evening Prayer (Series 1, 2 and 2 revised), the Litany (Series 1), Baptism (Series 1 and 2), Confirmation (Series 2), Matrimony (Series 1), and Burial (Series 1, and Series 3 Funeral Services).
- 12 See the Prayer Book (Alternative and Other Services) Measure 1965, s 3 (repealed). As to what are 'occasional offices', see PARA 936 note 6 ante.
- 13 As to the power to authorise the experimental use of new draft forms, see PARA 942 post.

UPDATE

937 Authorised forms of service

TEXT--The General Synod may approve new forms of Collect for use in any service approved under Canon B2 or B4 and Tables of Lessons for use in any service authorised under Canon B2; Canon B4a, added by Canon promulgated 25 February 1976.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/938. Choice of authorised services.

938. Choice of authorised services.

Decisions as to which of the authorised forms of service¹, other than the services known as occasional offices², are to be used in any church³ in a parish are to be taken jointly by the minister⁴ and the parochial church council⁵. In the case of the occasional offices, other than the order of confirmation, where more than one form of service is authorised the decision as to which form is to be used is to be made by the minister⁶ who is to conduct the service, but if any of the persons concerned objects beforehand to the use of the form selected and he and the minister cannot agree as to which form is to be used the matter must be referred to the diocesan bishop for his decision⁷.

1 He authorised under the Revised Canons Ecclesiastical, Canon B1 (substituted by Amending Canon No. 3): see PARA 937 ante.

2 As to the meaning of 'occasional offices', see PARA 936 note 6 ante.

3 For the meaning of 'church', see PARA 936 note 7 ante.

4 See PARA 936 note 4 ante.

5 Revised Canons Ecclesiastical, Canon B3 para 1 (substituted by Amending Canon No. 3). This canon is required by the Church of England (Worship and Doctrine) Measure 1974, s 1 (3) (a). As to its application to guild and cathedral churches, see PARA 936 note 9 ante. As to the position if the minister and council disagree, see PARA 936 ante. See also PARA 481 text to note 3 ante.

6 See PARA 936 note 4 ante.

7 Revised Canons Ecclesiastical, Canon B3 para 4 (substituted by Amending Canon No. 3). This canon is required by the Church of England (Worship and Doctrine) Measure 1974, s 1 (4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/939. Shortened forms of service.

939. Shortened forms of service.

A shortened form of service for Morning Prayer and for Evening Prayer was provided in 1872¹ for use on any day other than Sunday and certain special days either in cathedrals in addition to, or in churches in lieu of, the forms prescribed by the Book of Common Prayer². These forms are now authorised for use on any day³.

1 The forms of service are set out in the Act of Uniformity Amendment Act 1872, Schedule (repealed). They follow the forms set out in the Book of Common Prayer save that they omit the invitation to the general confession, the Venite (in Morning Prayer), one of the canticles, one of the lessons (unless two proper lessons are assigned), the second Lord's Prayer, and the prayers for the Queen's Majesty, the royal family and the clergy and people.

2 Act of Uniformity Amendment Act 1872, s 2 (repealed).

3 Revised Canons Ecclesiastical, Canon B1 para 1 (b) (substituted by Amending Canon No. 3). These shortened forms may be included in the services authorised by canon notwithstanding the repeal of the Act of Uniformity Amendment Act 1872 by the Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2: s 6 (4), Sch. 3 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/940. Services for use on special occasions.

940. Services for use on special occasions.

Special forms of service may be approved for use in any cathedral or church or elsewhere on occasions for which no provision is made in the Book of Common Prayer or by the General Synod under its power to approve forms of service¹, being forms of service which in both words and order are in the opinion of those approving the forms, reverent and seemly and neither contrary to nor indicative of any departure from the doctrine of the Church of England in any essential matter². This power may be exercised (1) by the Convocations of Canterbury and York within their respective provinces³; (2) where no such provision is made by the convocations, by the archbishops in respect of use in the provinces of Canterbury and York⁴; and (3) where no such provision is made by the convocation or the archbishops, by the Ordinary in respect of use in the diocese, but subject to any regulations made from time to time by the convocation of the appropriate province⁵.

Subject to any regulations made from time to time by the convocation of the province the minister may, on occasions for which no provision is made in the Book of Common Prayer or by the General Synod, the convocation, the archbishops or the Ordinary as described above, use forms of service considered suitable by him for those occasions⁶, being forms which are reverent and seemly and neither contrary to nor indicative of any departure from the doctrine of the Church of England in any essential matter⁷.

1 Ie its power under the Revised Canons Ecclesiastical, Canon B2 (substituted by Amending Canon No. 3): see PARA 937 ante.

2 Ibid Canon B4 paras 1-3 (substituted by Amending Canon No. 3), made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (5) (a): see PARA 935 ante. As to doctrine, see PARA 935 note 10 ante. This provision would, it seems, be applicable to such occasions as the institution and induction of an incumbent.

3 Revised Canons Ecclesiastical, Canon B4 para 1 (substituted by Amending Canon No. 3).

4 Ibid Canon B4 para 2 (substituted by Amending Canon No. 3).

5 Ibid Canon B4 para 3 (substituted by Amending Canon No. 3). As to the Ordinary, see PARA 458 ante.

6 Ibid Canon B5 para 2 (substituted by Amending Canon No. 3), made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (5) (b): see PARA 935 ante. Revised Canons Ecclesiastical, Canon B5 para 2, would, it seems, be applicable to eg a family service, harvest festival or festival of lessons and carols.

7 Ibid Canon B5 para 3 (substituted by Amending Canon No. 3). Any question concerning the observance of this provision may be referred to the bishop so that he may give such pastoral guidance or advice as he thinks fit, but such reference is without prejudice to the matter being made the subject matter of proceedings under the Ecclesiastical Jurisdiction Measure 1963: Revised Canons Ecclesiastical, Canon B5 para 4. As to doctrine, see PARA 935 note 10 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/941. Minor variations at minister's discretion.

941. Minor variations at minister's discretion.

The minister may in his discretion make and use variations which are not of substantial importance in any authorised form of service¹. All such variations must be reverent and seemly and neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter².

1 Revised Canons Ecclesiastical, Canon B5 para 1 (substituted by Amending Canon No. 3), made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (5) (b): see PARA 935 ante. In determining whether or not a variation is of substantial importance some guidance may perhaps be derived from a comparison of the rubrics in the Book of Common Prayer with those of other authorised forms of service; thus it might be argued that matters in respect of which mandatory directions are given in the former but not in the latter should not be regarded as of substantial importance. As to the preaching of a sermon at Morning or Evening Prayer (for which no provision is made in the Book of Common Prayer), see PARA 946 post.

2 Revised Canons Ecclesiastical, Canon B5 para 3 (substituted by Amending Canon No. 3). Any question concerning the observance of this provision or whether a variation is of substantial importance may be referred to the bishop so that he may give such pastoral guidance or advice as he thinks fit, but such reference is to be without prejudice to the matter in question being made the subject matter of proceedings under the Ecclesiastical, Jurisdiction Measure 1963: Revised Canons Ecclesiastical, Canon B5 para 4. As to doctrine, see PARA 935 note 10 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/942. Experimental use of draft forms of service.

942. Experimental use of draft forms of service.

Where a form of service is in course of preparation with a view to its submission to the General Synod for approval¹ the archbishops may authorise the service in draft form to be conducted by a minister in the presence of a congregation consisting of such persons only as the archbishops may designate².

1 I.e. approval under the Revised Canons Ecclesiastical, Canon B2 (substituted by Amending Canon No. 3): see PARA 937 ante.

2 Ibid Canon B5A (added by Amending Canon No. 3), made under the Church of England (Worship and Doctrine) Measure 1974, s 1 (6): see PARA 935 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/943. Obligation to perform divine service.

943. Obligation to perform divine service.

Provision is made in mandatory terms for the regular performance of Morning and Evening Prayer, the Litany, and the Holy Communion.

In respect of Holy Communion the normal minimum requirement, in both cathedral and parish churches, is celebration on all Sundays, on feast days and on Ash Wednesday¹. In every cathedral church the services of Morning and Evening Prayer, with the inclusion on the appointed days of the Litany, are to be said or sung daily². A similar requirement applies to parish churches³, subject to the exercise of a dispensing power by the bishop and to the recognition of a certain latitude in the case of ordinary weekdays⁴. Morning and Evening Prayer according to the Book of Common Prayer must be used daily in the chapels of certain university colleges⁵.

An obligation is laid upon all ministers having the cure of souls to administer, or cause to be administered, the occasional offices when required⁶.

1 See the Revised Canons Ecclesiastical, Canon B13 para 1, Canon B14 para 1, and PARA 974 post.

2 See *ibid* Canon B10, and PARA 987 post.

3 See *ibid* Canon B11 paras 1 (substituted by Amending Canon No. 3), 3, and PARA 987 post, and cf. Canon C24 para 1, and PARA 698 ante. For this purpose a building or part of a building designated as a parish centre of worship is deemed to be a parish church: Pastoral Measure 1968, s 29 (2). In respect of a place of worship which is neither a parish church nor a parish centre of worship, the bishop may direct what services shall be held or shall not be required to be held: *ibid* s 74 (3); Revised Canons Ecclesiastical, Canon B11A para 1 (added by Amending Canon No. 3). Cf. the Pluralities Act 1838, s 80, which empowers the bishop to order that there shall be two full services on every Sunday throughout the year or any part of the year in the church or chapel of every or any benefice within his diocese.

4 See the Revised Canons Ecclesiastical, Canon B11 paras 1, 2 (substituted by Amending Canon No. 3), 3, and PARA 987 post.

5 Universities Tests Act 1871, s 6; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2. The colleges concerned are those subsisting on 16th June 1871 in the Universities of Oxford, Cambridge and Durham. For the colleges' right to use an abridgment or adaptation, see PARA 988 note 5 post. See also Sparrow Simpson, Dispensation.

6 See the Revised Canons Ecclesiastical, Canon C24 para 2 (amended by Amending Canon No. 3), and PARA 698 ante. See further PARA 993 post. As to the meaning of 'occasional offices', see PARA 936 note 6 ante.

UPDATE

943 Obligation to perform divine service

NOTE 3--Now for this purpose any church in any parish, other than a parish church, or any building or part of a building licensed for public worship in any parish designated as a parish centre of worship is deemed to be a parish church: Pastoral Measure 1983 s 29(2) (amended by the Churchwardens Measure 2001 s 15(2), Sch 3). 1838 Act s 80 amended: Statute Law (Repeals) Act 1993.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/944. Language of divine service.

944. Language of divine service.

All prayers and services prescribed in and by the Book of Common Prayer are to be said or sung in the vulgar tongue, save that Latin may be used in the convocations, in the chapels or other public places of the several colleges and halls in the universities or in the university churches, in the colleges of Westminster, Winchester and Eton, and in such other places of religious and sound learning as custom allows or the Ordinary may permit¹.

¹ Revised Canons Ecclesiastical, Canon B42. See also the Book of Common Prayer, Concerning the Service of the Church.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/945. Lessons and psalms.

945. Lessons and psalms.

Changes have been made from time to time in regard to the portions of scripture prescribed for use at Morning and Evening Prayer. In 1871 new tables of lessons and new directions concerning lessons and psalms were substituted for those previously prescribed by the Book of Common Prayer¹. In 1922 alternative tables of lessons were authorised for use at the minister's discretion in lieu of the 1871 tables, with the proviso that when the alternative tables have once been adopted in any church or chapel they must be continuously followed at least until the end of the ecclesiastical year². More recently the range of permissible alternative lessons and psalms has been further extended; and similar provision has been made in respect of lessons at Holy Communion³.

Wherever in the Book of Common Prayer a portion of scripture is set out and appointed to be read, said or sung⁴, the minister has discretion to use in place of it the corresponding portion contained in any version of the Bible authorised for the purpose by the General Synod⁵, although an alternative version must not be so used without the agreement of the parochial church council or guild church council or, in the case of occasional offices⁶, if any of the persons concerned objects before hand to its use⁷.

1 Prayer Book (Tables of Lessons) Act 1871, s 2 Schedule. If Evening Prayer is said at two different times in the same place of worship on any Sunday (except a Sunday in which alternative second lessons are specially appointed in the table) the second lesson at the second time may at the minister's discretion by any chapter from the four Gospels or any lesson appointed in the table of lessons from the four Gospels: Schedule, Part II. Upon occasions to be appointed by the Ordinary other psalms may with his consent be substituted for those appointed in the Psalter: Schedule, Part II. Although still printed in the Book of Common Prayer the 1871 tables of lessons have in practice been superseded by more recently published tables.

2 Revised Tables of Lessons Measure 1922, s 1. The ecclesiastical year ends immediately before the first Sunday in Advent (which is the nearest Sunday to 30th November, whether before or after).

3 A lectionary of 1955, approved by the convocations in 1961, has been widely used, and additional provision has been made in the forms of service approved for use under the canons, as to which see PARA 937 ante.

4 This provision appears to apply only where the text is 'set out' in full (eg in the Epistles and Gospels for Holy Communion and in the Psalter) and not where the portions of scripture are merely specified (as in the Tables of Lessons). It thus leaves open the question what version or versions of the Bible may be used for the lessons at Morning and Evening Prayer. Any exclusive claim for the Authorised Version of 1611 could be supported by nothing more than long usage and the presence of the words 'Appointed to be read in churches' on its title page. In practice the use of versions of the Bible in modern English (not limited to those mentioned in note 5 infra) is undoubtedly widespread, and it is unlikely that this could be restrained by legal proceedings, although in some cases the bishop might be justified in exercising his discretion for the purpose of appeasing diversity and resolving doubts: see the Book of Common Prayer, Concerning the Service of the Church.

5 Prayer Book (Versions of the Bible) Measure 1965, s 1 (1); Synodical Government Measure 1969, s 3 (4). The Revised Version, the Revised Standard Version, the New English Bible and the Jerusalem Bible have been so authorised, and the Revised Psalter of 1963 is deemed to be so authorised: Prayer Book (Versions of the Bible) Measure 1965, s 1 (3). For special requirements applicable to the granting of authorisation by the General Synod, see the Synodical Government Measure 1969, s 3 (4), (7), Sch. 2, art. 7, and PARA 403 ante. The authorisation may be for a limited period or subject to such other limitations as the synod may determine, and may at any time be amended or revoked: Prayer Book (Versions of the Bible) Measure 1965, s 1 (2); Synodical Government Measure 1969, s 3 (4). As to who may read the lesson, see PARA 989 post.

6 As to the occasional offices, see PARA 936 note 6 ante.

7 Prayer Book (Versions of the Bible) Measure 1965, s 1 (1) proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/946. Sermons.

946. Sermons.

In every parish church a sermon must be preached at least once each Sunday, except for some reasonable cause approved by the bishop of the diocese¹, and provision is generally made in cathedral statutes for sermons. The Book of Common Prayer provides by rubric for the delivery of a sermon or homily² after the Creed in the order for Holy Communion, but there is no corresponding rubric in respect of Morning or Evening Prayer, although a sermon is customarily preached on Sundays at those services. The preacher must endeavour himself with care and sincerity to minister the word of truth to the glory of God and to the edification of the people³. Before the sermon the preacher may move the people to join with him in a bidding prayer, concluding with the Lord's Prayer⁴.

The sermon may be preached by the incumbent or any other person licensed to do so by the bishop, for example a clerk in holy orders⁵ or a reader⁶ or, if authorised to do so by the bishop, a deaconess⁷. It would appear that, strictly speaking, other lay persons reading Morning or Evening Prayer are not authorised to preach.

1 Revised Canons Ecclesiastical, Canon B18 para 1. It is the duty of the priest having the cure of souls to preach the sermon or cause it to be preached in his church: Canon C24 para 3. The bishop may, in his discretion, order that there be two full services on every Sunday in the church or chapel of every or any benefice in his diocese, and can direct that each service include a sermon: Benefices Act 1838, s 80.

2 The publication of books of homilies in English for the use of preachers goes back to mediaeval times: Scudamore, *Notitia Eucharistica* (2nd Edn 1876) 290 et seq. A collection of twelve homilies (one of which was required to be read in church every Sunday: see Injunctions of August 1547) was published in 1547, followed in 1571 by a second collection of twenty-one homilies (which are listed in the Articles of Religion 35). They were extensively used as model sermons and were regarded as authoritative statements of doctrine.

3 Revised Canons Ecclesiastical, Canon B18 para 2.

4 See *ibid* Canon B19 (amended by Amending Canon No. 1) which contains a lengthy form of bidding prayer to be used 'in this form or to this effect, as briefly as is convenient'. In practice it is seldom used in parish churches.

5 *Finch v Harris* (1702) 12 Mod Rep 640.

6 Revised Canons Ecclesiastical, Canon E4 para 2b.

7 *Ibid* Canon D1 para 4 (a) (substituted by Canon promulgated 20th February 1973).

UPDATE

946 Sermons

NOTE 1--For 'Benefices Act 1838 s 80' read 'Pluralities Act 1838 s 80'. 1838 Act s 80 amended: Statute Law (Repeals) Act 1993.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/947. Hymns, anthems and music.

947. Hymns, anthems and music.

The law as to conformity of worship does not preclude the addition or interpolation of hymns or the minister's discretion as to what portions of the service shall be sung¹. In all churches and chapels (other than cathedral or collegiate churches or chapels where the matter is governed by or dependent upon special statutes or customs) it belongs to the minister to direct when the organ is to be played and to decide what parts of the service are to be sung². In the choosing of chants, hymns, anthems, and other settings and in the ordering of the music of the Church the final responsibility and decision rests at all times with the minister, although he must pay due heed to the advice and assistance of any organist or choirmaster³.

1 *Hutchins v Denziloe and Loveland* (1792) 1 Hag Con 170 at 175-180; *Read v Bishop of Lincoln* [1892] AC 644 at 659-661, PC.

2 Revised Canons Ecclesiastical, Canon B20 para 1.

3 Ibid Canon B20 para 2. As to the respective functions of the minister and of the organist, see PARA 560 note 2 ante. It is the minister's duty to ensure that what is chosen is appropriate, both words and music, to the act of worship and prayer and to the congregation, and to banish all irreverence in the practice and the performance: Canon B20 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/948. Notices.

948. Notices.

The minister must give notice every Sunday publicly during the time of divine service, and by notice affixed at the church door or otherwise, of, and of the times of the services on, the feast days and fast days which are to be observed in the week following¹. Where the forms of service prescribed in the Book of Common Prayer are used he must give notice of the Communion if there is occasion for it²; he may also make announcements on certain matters of an ecclesiastical nature including, it seems, banns of matrimony; but nothing is to be proclaimed or published in church during divine service but by the minister, nor anything by him but what is prescribed in the rules of the Book of Common Prayer or enjoined by the Queen or by the Ordinary³. In practice this provision is not likely to be construed so strictly as to exclude notices which concern the congregation and ordinary church business and which are not contrary to the spirit of the Prayer Book⁴; but, in general, the making of proclamations or giving of public notices concerning non-ecclesiastical matters on the occasion of divine service is unlawful⁵.

1 Revised Canons Ecclesiastical, Canon B7; Book of Common Prayer, rubric following the Creed in the Order for the Administration of The Lord's Supper or Holy Communion. It is to be noted that this rubric occurs in the part of the order which is commonly called the 'ante-communion' and which is prescribed for use on every Sunday and holy day, even if there be no celebration: see the rubric at the end of that order. It has been held that, the rubric being imperative, an omission to give the required notice is an ecclesiastical offence (*Elphinstone v Purchas* (1870) LR 3 A & E 66 at III), from which decision it appears also that notice cannot lawfully be given of any holy days which are not included in the Table of Feasts in the Book of Common Prayer or approved by the General Synod or the Ordinary under Canon B6 para 5 (amended by Amending Canon No. 1). As to feast days, fast days and other holy days, see PARA 950 post. As to the meaning of 'divine service', see PARA 691 note 1 ante.

2 See PARA 976 post.

3 Book of Common Prayer, rubric following the Creed in the Order for the Administration of The Lord's Supper or Holy Communion.

4 Cf. the decision as to hymns in *Read v Bishop of Lincoln* [1892] AC 644 at 660, PC.

5 See the Parish Notices Act 1837, ss 1, 5.

UPDATE

948 Notices

NOTE 5--1837 Act repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/949. The congregation's part in divine service.

949. The congregation's part in divine service.

The canons require all persons present in the time of divine service, in the due places, audibly with the minister, to say the general confession, the Lord's Prayer and the Creed, and make the answers appointed in the authorised form of service¹. They are enjoined reverently to kneel or stand when the prayers are read, and to stand for the canticles, Creed and Gospel, giving due reverence to the name of the Lord Jesus².

1 Revised Canons Ecclesiastical, Canon B9 para 1 (amended by Amending Canon No. 3).

2 Ibid Canon B9 para 2. The reference to the Gospel is a reference to the Gospel at Holy Communion, not to the second lesson at Morning and Evening Prayer.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/950. Days of special observance.

950. Days of special observance.

Certain days of the year, in addition to Sundays¹, are designated as days to be specially observed in the Church of England. They include feasts (movable and immovable)², days of fasting or abstinence and vigils³, as set out in the relevant tables prefixed to the Book of Common Prayer; and the anniversary of the day of the accession of the reigning sovereign, described as a solemn day for which a particular service is appointed⁴. The General Synod may approve holy days which may be observed generally or provincially, and approve holy days which may be observed locally⁵.

1 Sunday is ever to be celebrated as a weekly memorial of the resurrection and kept according to God's will and pleasure, particularly by attendance at divine service, by deeds of charity and by abstention from all unnecessary labour and business: Revised Canons Ecclesiastical, Canon B6 para 1.

2 See the Book of Common Prayer, Tables and Rules for the Moveable and Immoveable Feasts. The principal feasts are Christmas Day, Epiphany, the Annunciation, Easter Day, Ascension Day, Whitsunday, trinity Sunday and All Saints' Day: Revised Canons Ecclesiastical, Canon B6 para 2. Every parishioner must take Communion at Easter: Book of Common Prayer, rubric following the Order for the Administration of the Lord's Supper or Holy Communion.

3 See the Book of Common Prayer, Table of the Vigils, Fasts and Days of Abstinence. Of these the forty days of Lent, particularly Ash Wednesday and the Monday to Saturday before Easter, ought specially to be observed: Revised Canons Ecclesiastical, Canon B6 para 3. Good Friday is ever to be observed by prayer with meditation on the Lord's death and passion, by self-discipline and by attendance at divine service: Canon B6 para 4. As to notices of fast days, see PARA 948 ante.

4 This service appears in the Book of Common Prayer preceding the Articles of Religion. It was authorised by royal warrant dated 26th July 1958.

5 Revised Canons Ecclesiastical, Canon B6 para 5 (amended by Amending Canon No. 1). As to the giving of notice of holy days, see PARA 948 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/951. Provision of books and furnishings.

951. Provision of books and furnishings.

In every church and chapel there must be provided¹ (1) for the minister's use a Bible², including the Apocrypha, and a Book of Common Prayer, both of large size³, and surplices, which must be maintained in a clean condition⁴; (2) a service book, together with cushion or desk, for use at the communion table⁵; (3) convenient desks for the reading of prayers and God's Word⁶; (4) unless it is not required, a decent pulpit for the sermon, to be set in a convenient place determined, in case of dispute, by the Ordinary⁶, with a convenient Bible for the preacher's use⁷; (5) a communion table with communion plate and linen⁸; (6) a font⁹; (7) seats for the people¹⁰; (8) at least one bell to ring the people to divine service¹¹; (9) a box for the alms of the people¹²; and (10) books for recording services¹³ and for registering baptisms¹⁴, confirmations¹⁵ and marriages¹⁶.

1 The things here mentioned must, insofar as the law may from time to time require, be provided by and at the charge of the parochial church council: Revised Canons Ecclesiastical, Canon F14; see PARA 579 ante.

2 As to the versions authorised to be read, see PARA 945 ante.

3 Revised Canons Ecclesiastical, Canon F9.

4 Ibid Canon F5.

5 Ibid Canon F9.

6 Ibid Canon F6.

7 Ibid Canon F9.

8 See ibid Canons F2-F4, and PARA 966 post.

9 See ibid Canon F1, and PARA 994 post.

10 See ibid Canon F7, and PARA 555 ante.

11 Ibid Canon F8 para 1. It must not be rung contrary to the minister's direction: Canon F8 para 2.

12 Ibid Canon F10. The alms are to be applied to such uses as the minister and parochial church council think fit or, if they disagree, the Ordinary determines: Canon F10. See also PARAS 551, 556, and PARA 585 note 5 ante, 981 post.

13 See ibid Canon F12, and PARA 952 post.

14 See ibid Canon F11, and PARA 995 post.

15 See ibid Canon F11, and PARA 999 post.

16 See ibid Canon F11, and PARA 1034 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(i) In general/952. Register of services.

952. Register of services.

A register book of services must be provided in all churches and chapels¹, in which there must be recorded every service of public worship, together with the name of the officiating minister and of the preacher, the number of communicants, the amount of any alms or other collections and, if desired, notes of significant events².

1 Revised Canons Ecclesiastical, Canon F12 para 1; Canon F14.

2 Ibid Canon F12 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/953. The question of legality.

(ii) Matters of Ritual and Ceremonial

A. IN GENERAL

953. The question of legality.

The requirements of the law as to conformity in the conduct of divine service extend to the observance of correct procedure in matters of ritual and ceremonial¹. Failure on the part of the clergy to keep within the bounds of legality in these matters may entail liability to prosecution for offences against the laws ecclesiastical².

Questions touching ritual and ceremonial may arise also in civil proceedings in the ecclesiastical courts, for example where a faculty is sought for the authorisation of a particular ornament or decoration³.

1 There is a legal distinction between a rite and a ceremony: a rite consists in services expressed in words; a ceremony in gestures or acts preceding, accompanying or following the utterance of those words: *Martin v Mackonochie* (1868) LR 2 A & E 116 at 130, 134-136; on appeal LR 2 PC 365.

2 As to offences involving matters of doctrine, ritual and ceremonial, see PARA 1354 et seq post.

3 Such questions are likely to arise eg in regard to aumbries, tabernacles, candlesticks and Stations of the Cross. For these and other examples, see PARA 960 et seq post. The Ecclesiastical Jurisdiction Measure 1963 makes special provision for the conduct of proceedings, both criminal and civil, which involve matters of doctrine, ritual and ceremonial: see PARA 1295 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/954. Tests of legality.

954. Tests of legality.

In testing the legality or illegality of ecclesiastical practices certain rules have been laid down as well founded in principle, reason and law, namely that what is expressly prohibited is prohibited altogether, and may not be evaded by any contrivance which, under a different name or appearance, attains the same end¹; what is expressly ordered may not be evaded by an illusory or partial compliance; whatever is subsidiary to what is ordered and whatever is in itself decent and proper and in accordance with primitive and catholic use is, generally speaking, lawful. There are, in other words, three categories of these things: (1) things lawful and ordered; (2) things unlawful and prohibited; (3) things neither ordered nor prohibited expressly or by implication, but the doing of which must be governed by the living discretion of some person in authority².

1 Thus a bishop cannot by a sentence of consecration legalise the retention in the church of an ornament which is forbidden by law to be there: *Davey v Hinde* [1901] P 95; see also *Markham v Shirebrook Overseers* [1906] P 239. However, as to the effect of the bishop's authorisation of reservation of the sacrament, see PARA 986 text to note 4 post.

2 *Martin v Mackonochie* (1868) LR 2 A & E 116 at 191, per Sir Robert Phillimore; affd. LR 2 PC 365 at 385. The person to whom such matters should be submitted is the bishop of the diocese: Book of Common Prayer, Preface, as applied in *Martin v Mackonochie* supra at 191. The function of the bishop to whom the parties in doubt resort is not to pronounce a legal judgment but to resolve, if possible, the doubt, and if he is unable to do so he may refer it to the archbishop. This course was adopted in the cases of incense and processional lights and the reservation of the sacrament, upon which the archbishops pronounced their Opinions at Lambeth on 31st July 1899 and 1st May 1900 (Macmillan & Co.'s Official Reports), respectively. These opinions, hereafter referred to, were expressly stated not to be judgments in any sense of the term.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/955. Observance of the rubrics.

955. Observance of the rubrics.

Courts have held in the past that the directions contained in the rubrics¹ of the Book of Common Prayer have the full force of statutory provisions and must be strictly observed, without any addition, omission or alteration, and without any distinction being made between what is important and what appears to be trivial². In recent times, however, courts have sometimes given indications, in cases relating to ritual and ceremonial, of a readiness to modify their insistence on a strict application of the rubrics³. This tendency is likely to be reinforced by the provisions concerning rubrics which are contained in the Church of England (Worship and Doctrine) Measure 1974⁴. It seems that, as a further effect of that enactment, the rubrics in all authorised forms of service are to be regarded as having equal force⁵.

1 For the meaning of 'rubrics', cf. para 935 note 4 ante. As to the Ornaments Rubric, see PARA 960 post, and as to the 'black rubric', see PARA 985 note 2 post.

2 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report at 187; *Martin v Mackonochie* (1868) LR 2 PC 365 at 382, 383. Such pronouncements are, however, of doubtful relevance today, since the provisions of the Act of Uniformity 1662 from which they derived their force have been repealed by the Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2. See also note 4 infra.

3 See eg *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441 at 444, [1958] 1 WLR 1183 at 1187. See also Garth Moore, *An Introduction to English Canon Law* (1967) 54, 55.

4 See the Church of England (Worship and Doctrine) Measure 1974, s 1 (1) (b), which empowers the General Synod to make provision by canon or regulations made thereunder for any matter (except the publication of banns) to which any of the rubrics in the Book of Common Prayer relate, and s 1 (2), which provides that any such canon or regulations shall have effect notwithstanding anything inconsistent therewith contained in any of those rubrics.

5 An opinion to this effect had already been expressed in *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057. See PARA 958 post, and PARA 986 note 3 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/956. Judicial precedent.

956. Judicial precedent.

Whilst in the nineteenth century the doctrine of the binding force of precedent had already found a place in the ecclesiastical legal system¹, it was recognised that in its application to matters of ritual and ceremonial some measure of flexibility was justified. Decisions, even of the highest court, are liable to be overruled where there is fresh light on facts which were not considered by the tribunal on the previous occasion, and even where there is no such fresh light the tribunal is at liberty to examine the reasons upon which the decisions rest and to give effect to its own view of the law².

The law does not exclude historical investigation in determining questions of ritual and ecclesiastical practice. Contemporaneous usage is of great value in determining such subjects, and where it is important to ascertain facts of a public nature the law permits historical works to be referred to³.

1 See the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 13, 27, 28, and PARA 1271 post.

2 *Read v Bishop of Lincoln* [1892] AC 644 at 654, 655, PC; *Ridsdale v Clifton* (1877) 2 PD 276 at 305-307, PC. It is now expressly provided that in matters of doctrine, ritual or ceremonial neither the Court of Ecclesiastical Causes Reserved nor a Commission of Review is to be bound by any decision of the Judicial Committee of the Privy Council: see the Ecclesiastical Jurisdiction Measure 1963, ss 45 (3), 48 (5); see, however, s 48 (6) as to the extent to which a Commission of Review is bound by the decision of a previous Commission of Review; and see PARAS 1271, 1292 post.

3 *Ridsdale v Clifton* (1877) 2 PD 276, PC.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/957. Divergence between law and practice.

957. Divergence between law and practice.

Attention has been drawn in successive editions of this work to the wide divergence existing between the law and the practice of the Church of England in regard to matters of ritual and ceremonial¹. In 1954, shortly before the publication of the last edition, the situation resulting from this divergence had been described in the report of the Ecclesiastical Courts Commission, in which the hope was expressed that early action would be taken to repeal those parts of the ritual and ceremonial law which were no longer observed and over which recourse to a court of law would not now be thought proper; the report also stated that for the successful working of a court for the correction of ritual and ceremonial offences, not only must the law of public worship be related to present day practice, but it must be formed in such a way that the full width of church tradition will find a place in its framework and full allowance be made for variation in ceremonial necessitated by local circumstances².

1 The Second Edition of Halsbury's Laws of England (1933) stated that many of the matters which arise in ritual and ceremonial cases and which have been pronounced unlawful by the Judicial Committee of the Privy Council have become of general usage. In explanation of this development it cited the Report of the Royal Commission on Ecclesiastical Discipline 1906 (Cd. 3040) PARA 363: a court dealing with matters of conscience and religion must, above all others, rest on moral authority if its judgments are to be effective; as thousands of clergy with strong lay support refuse to recognise the jurisdiction of the Judicial Committee, its judgments cannot practically be enforced. See PARA 956 ante, 958 post.

2 Report of the Archbishops' Commission on the Ecclesiastical Courts (SPCK 1954) 72, 73. See also the report of the Commission on Fees and Faculties (CIO 1959) 59.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/958. Recent developments.

958. Recent developments.

During the period since 1954, while there has been no comprehensive reform of the law relating to ritual and ceremonial, there has been much piecemeal legislation, concerned largely with matters of ritual¹, but also in a few instances with the physical accompaniments of worship². Among the most important developments has been the experimental introduction, under enabling provisions³, of alternative forms of service, involving deviation from the Book of Common Prayer in respect not only of liturgical texts but also of the accompanying rubrical directions⁴, followed by the delegation to the General Synod of power to legislate by canon in respect of worship and doctrine⁵. Another major development has been the recognition, for purposes of ecclesiastical jurisdiction, of a distinct category of cases involving matter of doctrine, ritual or ceremonial, and the establishment of a new hierarchy of courts for adjudication in such cases⁶. Of special significance in this connection is the statutory provision that the appellate courts dealing with such matters are not to be bound by decisions of the Judicial Committee of the Privy Council⁷.

Apart from changes which are the direct result of new legislation, a number of other factors may be regarded as contributing to the evolution of the law in regard to matters of ritual and ceremonial. In recent years there has been a growing disinclination to pursue legal remedies in this sphere, as is evident from the fact that neither the Court for Ecclesiastical Causes Reserved nor a Commission of Review has yet been called upon to exercise the jurisdiction conferred on them in 1963⁸. There are indications also of a greater readiness on the part of consistory courts to grant faculties in unopposed cases where the petitions would formerly have been rejected on the ground of illegality; in such cases the courts have, it seems, been influenced by the need for a fuller recognition of established local usage and a less rigorous interpretation of the rubrics of the Book of Common Prayer⁹.

1 See the Prayer Book (Alternative and Other Services) Measure 1965 (repealed); Prayer Book (Miscellaneous Provisions) Measure 1965 (repealed); Prayer Book (Versions of the Bible) Measure 1965; Prayer Book (Further Provisions) Measure 1968 (largely repealed); Church of England (Worship and Doctrine) Measure 1974.

2 Holy Table Measure 1964; Vestures of Ministers Measure 1964 (repealed).

3 Prayer Book (Alternative and Other Services) Measure 1965 (repealed).

4 For an example, see PARA 986 note 3 post (new rubric interpreted by court as authorising reservation of the sacrament).

5 Church of England (Worship and Doctrine) Measure 1974, ss 1, 2.

6 See PARA 1272 et seq post.

7 See PARA 956 note 2 ante.

8 As to these bodies, see PARAS 1289-1291 post.

9 Cf. para 955 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/A. IN GENERAL/959. Ceremonial use of lights, processions and incense.

959. Ceremonial use of lights, processions and incense.

In the examples which follow in this paragraph the law has been stated in substantially the same terms as in the previous edition of this work, but it should be borne in mind that for the reasons already given there is some uncertainty as to whether, in the future, courts would be prepared to apply the law strictly in those terms¹.

The ceremonial use of lights has been held to be illegal². Candlesticks with lighted candles may, however, lawfully be kept on or behind the holy table during the celebration of Holy Communion, even though they are not needed for giving light, provided the lighting does not take place during the celebration and provided the lights are not used for ceremonial purposes³. To cause lighted candles to be held one on each side of the priest when reading the Gospel, where they are not required for giving light, has been held to be illegal as an addition to the ceremonies prescribed by the law⁴. There is no authority to warrant the carrying of lights in procession⁵; it has indeed been held that processions of a ceremonial nature are themselves illegal⁶.

There is no authority for the use of incense in the public worship of the Church of England and as a part of that worship; on the contrary, the ceremonial use of it has been declared illegal. However, there is no contravention of the law if incense is used simply to sweeten the church and outside the worship altogether; nor is it a necessary inference that the liturgical use of incense is by law permanently excluded from the church's ritual⁷.

¹ Cf. para 958 ante. A similar caution is necessary in respect of some of the statements contained in subsequent paragraphs. See also PARA 955 ante.

² *Sumner v Wix* (1870) LR 3 A & E 58; *Elphinstone v Purchas* (1870) LR 3 A & E 66; on appeal on other points sub nom. *Hebbert v Purchas* (1871) LR 3 PC 605; *Martin v Mackonochie* (1868) LR 2 PC 365 at 387, 388; *Read v Bishop of Lincoln* [1892] AC 644 at 666, PC; *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289 at 304; *Re St Mary, Tyne Dock* [1954] P 369 at 379, [1954] 2 All ER 339 at 344.

³ See *Read v Bishop of Lincoln* [1891] P 9; on appeal [1892] AC 644, PC, where, in the court of the Archbishop of Canterbury, Archbishop Benson investigated at length the law upon the point. Before this case it had been considered that the mere use of candles on the holy table during Holy Communion was illegal unless they were needed for giving light: see eg *Martin v Mackonochie* (1868) LR 2 PC 365 at 385-391; cf. *Westerton v Liddell, Horne etc* (1855) Moore's Special Report. On appeal in *Read v Bishop of Lincoln* [1892] AC 644 at 666-668, the Privy Council rested its opinion on the fact that the bishop had not been responsible for introducing the lights, and that any failure on his part to object to them could not be an ecclesiastical offence, but it thought it a matter for grave consideration now, for Archbishop Benson's exposition of the history of the subject had afforded new matter for consideration since *Martin v Mackonochie* supra. In subsequent cases the archbishop's decision in *Read v Bishop of Lincoln* [1891] P 9 has been accepted as without doubt correct: see eg *Re St Paul, Camden Square* (1897) 14 TLR 85; *Vicar and Churchwardens of Wimbledon v Eden, Re St Mark's, Wimbledon* [1908] P 167 at 173; *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289 at 294, 304; *Re St Saviour's Hampstead* [1932] P 134 at 140; *Re St Saviour's Church, Walthamstow* [1951] P 147 at 150, [1950] 2 All ER 812 at 814. See also PARA 966 post.

⁴ *Sumner v Wix* (1870) LR 3 A & E 58 at 62.

⁵ It was so stated in the Opinions of Lambeth (31st July 1899): see PARA 954 note 2 ante.

⁶ *Elphinstone v Purchas* (1870) LR 3 A & E 66; on appeal on other points sub nom. *Hebbert v Purchas* (1871) LR 3 PC 605. In practice processions are now common in cathedrals and churches, especially on great festivals and other important occasions.

7 See the Opinions of Lambeth (31st July 1899): para 954 note 2 post. It had been held by the Court of Arches in *Martin v Mackonochie* (1868) LR 2 A & E 116 at 215 that to bring in incense at the beginning or during the celebration and remove it at the close of the celebration of Holy Communion is a distinct ceremony, additional, and not even indirectly incident to the ceremonies ordered by the Book of Common Prayer. In *Sumner v Wix* (1870) LR 3 A & E 58 it was held that the ceremonial use of incense immediately before the celebration of Holy Communion, so as to be preparatory or subsidiary to the celebration of Holy Communion, is unlawful, and in *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289, at 305 the decision of the Court of Arches was to the same effect. See also PARA 966 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/B. ORNAMENTS, DECORATIONS AND FURNISHINGS/960. Requirements of rubrics and canons.

B. ORNAMENTS, DECORATIONS AND FURNISHINGS

960. Requirements of rubrics and canons.

The category of things lawful and ordered¹ is governed primarily by the so-called 'Ornaments Rubric'² and by a number of canons appearing under the head of 'Things appertaining to Churches'. The Ornaments Rubric is in these words: 'And here is to be noted, that such Ornaments of the Church, and of the Ministers thereof at all times of their Ministration, shall be retained, and be in use, as were in this Church of England by the Authority of Parliament, in the Second Year of the Reign of King Edward the Sixth'³. The rubric deals with two kinds of ornaments, the ornaments of the church and the ornaments of the minister⁴.

The canons contain detailed provisions which may be regarded as supplementary to those of the Ornaments Rubric⁵.

The lawfulness of things not covered by the relevant enactments is to be determined in accordance with the general principles established by decisions of the courts⁶.

1 See PARA 954 ante.

2 It is set out in the Book of Common Prayer preceding the Order for Morning Prayer.

3 The precise meaning and effect of the Ornaments Rubric has been much disputed, both in historical studies of the liturgy and in judicial proceedings of the last century. The rubric first appeared in the Prayer Book of 1559, but it had not been in the draft of that book when it was approved by Parliament, although the words appeared in the Act of Uniformity 1558, s 13 (repealed). It was indicative of a reaction against the austerity of the Second Prayer Book of Edward VI (1552), which had required that a minister 'at the tyme of the Comunion and all other tymes in his ministration, shall use neither albe, vestment, nor cope, but ... being a preest or deacon, he shall have and wear a surplice onely' (Order for Morning Prayer). The Ornaments Rubric represented a return to the standards of the early part of the reign of Edward VI. There has been much controversy as to whether its mention of the second year of Edward VI was intended to refer to the period before the introduction of the First Prayer Book of Edward VI (1549), which was in the third year of his reign, or to the provisions contained in that book, by which the celebrant at Holy Communion was directed to wear 'a white Albe plain, with a vestment or Cope' and his assistants to wear 'Albes with tunacles'. The controversy is, however, no longer of practical importance: see PARA 970 post.

4 As to ornaments of the minister, see PARAS 970, 971 post.

5 See the Revised Canons Ecclesiastical, Canons F1-F12, and PARA 951 ante.

6 Cf. para 953 et seq ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/B. ORNAMENTS, DECORATIONS AND FURNISHINGS/961. Distinction between ornaments and other articles.

961. Distinction between ornaments and other articles.

A distinction must be drawn between those articles which are ornaments of the church in the strict sense of the term and those which are merely decorations, furnishings or fittings. In ecclesiastical law 'ornaments' is not confined, as by modern usage, to articles of decoration or embellishment, but it is used in the larger sense of the word 'ornamentum'; all the several articles used in the performance of the service and rites of the church, including organs and bells, are 'ornaments'¹.

The term 'ornaments of the church' in the rubric is confined to those articles the use of which in the services and ministrations of the church is prescribed by the First Prayer Book of Edward VI². Thus, the rubric provides for the use, inter alia, of an English Bible, the new prayer book, a poor man's box, a chalice, a corporas, a paten and a bell³.

The canons require the provision, inter alia, of a font (with cover), a holy table, articles of communion plate and line, a reading desk and pulpit, seats for the use of parishioners and others, at least one church bell, a Bible, a Book of Common Prayer and a service book for use at the communion table, an alms box, and the necessary register books⁴.

Articles not expressly provided for by the rubric or canons may be permitted, subject in the case of ornaments to the condition that their use must be consistent with and subsidiary to the services of the church⁵; in the case of other articles such as decorations, the test of legality is whether or not they are in danger of being used for purposes of veneration or adoration⁶.

1 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report at 156, 157, cited in *Elphinstone v Purchas* (1870) LR 3 A & E 66, at 89.

2 *Martin v Mackonochie* (1868) LR 2 PC 365 at 390.

3 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report.

4 Revised Canons Ecclesiastical, Canons F1-F12. As to the church parochial council's responsibility for providing these articles, see PARA 951 note 1 ante.

5 *Martin v Mackonochie* (1868) LR 2 PC 365 at 390, cited in *Elphinstone v Purchas* (1870) LR 3 A & E 66 at 89. As to vestments and to the ornaments of the minister, see however, *Ridsdale v Clifton* (1877) 2 PD 276 at 336 et seq, PC, and see PARAS 970, 971 post.

6 *Vincent v Rector and Churchwardens of St Magnus the Martyr etc* [1925] P 1 at 11, 12. In exercising their discretion in such matters the courts have been concerned to distinguish between objects which are legitimate aids to devotion and those which are likely to attract or encourage superstitious reverence. There have been diverse interpretations of 'superstitious reverence' as used in this context. According to Lord Penzance in *Clifton v Ridsdale* (1876) 1 PD 316 it should not be regarded as limited to cases of actual worshipping or adoration of images contrary to the Articles of Religion 22, but in recent times the courts have usually been less astute to find possibilities of superstitious reverence: cf. *Re St Peter, St Helier, Morden, Re St Olave, Mitcham* [1951] P 303, [1951] 2 All ER 53.

UPDATE

961 Distinction between ornaments and other articles

NOTE 5--See *Re St John the Evangelist, Chopwell* [1995] 3 WLR 606 (introduction of acolytes' chairs, thurible and stand, sanctuary bells, altar standards, candelabra, votive candle stands and holy water stoup).

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962. Painted windows and pictures.

In the absence of danger of superstitious reverence, painted windows, paintings and other pictures for the decoration of the church are free from objection: if there is such danger they are exposed to the charge of illegality¹. Though the question of superstitious reverence being paid to a window might conceivably arise, the question is not nearly so likely to arise as in the case of a rood².

In general, pictures must be judged according to the same rules as representations in glass, wood or stone³.

¹ *Clifton v Ridsdale* (1876) 1 PD 316 at 358, per Lord Penzance; affd. sub nom. *Ridsdale v Clifton* (1877) 2 PD 276, PC.

² *Re St Paul's Carlisle* [1919] P 134 at 141.

³ *Vicar and Churchwardens of St John, Pendlebury v Parishioners of St John, Pendlebury* [1895] P 178, per Chancellor P.V. Smith, approved in the Court of Arches in *Vincent v Rector and Churchwardens of St Magnus the Martyr etc* [1925] P 1 at 16. See also *Hudson v Fulford* (1913) 30 TLR 32, where a picture was ordered to be removed which had been introduced without consulting the churchwardens or congregation.

UPDATE

962 Painted windows and pictures

NOTE 3--See *Re St Edward the Confessor, Mottingham* [1983] 1 WLR 364 (petition to erect plaque over font refused as scene depicted inconsistent with doctrine relating to baptism).

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963. Stations of the Cross.

On the question of the legality of the set of representations commonly called the Stations of the Cross there have in recent years been conflicting decisions of consistory courts¹. The divergence of judicial opinion is principally concerned with the interpretation to be placed on certain judgments of the Court of Arches² which have sometimes been thought to constitute an unqualified denial of the legality of Stations of the Cross³. In the absence of an unequivocal determination of the question by an appellate court it is not possible to state the law on this matter with certainty, but on the balance of authority the following propositions would appear to be justified. Considered as decorations, Stations of the Cross are not intrinsically unlawful. It is a question for the discretion of the court whether the granting of a faculty is warranted in a particular case. The court will have regard to the purposes for which the stations are intended or likely to be used and will grant a faculty only if there appears to be no danger of their becoming objects of superstitious reverence. This is a question of fact which ought to be determined upon a broad consideration of the circumstances and with due regard to the change of outlook in such matters which has occurred in the Church since the nineteenth century. Stations of the Cross have sometimes been treated as *sui generis*, but in judging of their legality it is probably right to apply the same principles as in the case of other images, such as crucifixes. Where, in the exercise of its discretion a court grants a faculty for Stations of the Cross, it may often think it appropriate, in order to meet the possibility of abuse in the future, to direct that the authorisation is to be effective only until further order⁴.

1 In *Re St Peter, St Helier, Morden, Re St Olave, Mitcham* [1951] P 303, [1951] 2 All ER 53; in *Re St Mary, Tyne Dock* [1954] P 369, [1954] 2 All ER 339; and in *Re St Augustine's, Brinksway* [1963] P 364, [1963] 3 All ER 389, it was that Stations of the Cross are not intrinsically unlawful. In *Re St Mary the Virgin, West Moors* [1963] P 390, [1962] 3 All ER 722, it was held, on the contrary, that they are illegal ornaments. In each of these cases the decision covered all fourteen stations, including four for which no scriptural authority could be shown. In view of the decision in *Re St Mary, Tyne Dock* supra, the statement in *Markham v Shirebrook Overseers* [1906] P 239 that the general desire of the parishioners to retain church ornaments not illegal in themselves must be proved on an application for a confirmatory faculty would appear to be too wide.

2 See, in particular, the judgments of Lord Penzance in *Clifton v Ridsdale* (1876) 1 PD 316; *affd.* sub nom. *Ridsdale v Clifton* (1877) 2 PD 276, PC, and of Sir Lewis Dibdin in *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289; subsequent proceedings [1928] P 69.

3 For earlier cases in consistory courts, see the cases cited in *Re St Augustine's, Brinksway* [1963] P 364, [1963] 3 All ER 389.

4 The propositions in the text are based on the judgments in *Re St Peter, St Helier, Morden, Re St Olave, Mitcham* [1951] P 303, [1951] 2 All ER 53; and in *Re St Augustine's Brinksway* [1963] P 364, [1963] 3 All ER 389.

UPDATE

963 Stations of the Cross

NOTE 1--*Re St Peter*, cited, applied in *Re Christ Church, Waltham Cross* [2001] 3 WLR 1481.

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964. Crosses, crucifixes and images.

Crosses, as emblems of the Christian faith, may lawfully be used as architectural decorations in the absence of superstitious reverence and, it seems, provided that they are not fixed to the communion table¹.

Crucifixes and sculptured images, whether erected above the chancel or elsewhere, are lawful provided that they are not likely in the circumstances of the particular case to be abused by superstitious reverence².

1 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report, where a cross affixed to the chancel screen was held to be mere architectural decoration, whilst crosses affixed to holy tables were ordered to be removed as inconsistent with the idea of a table; *Liddell v Beal* (1860) 14 Moo PCC 1, where a cross on a window sill above the communion table was held to be legal, as was a wooden ledge on the communion table; *Durst v Masters* (1876) 1 PD 373, PC, where a movable wooden cross placed on a retable or ledge above the communion table with the intention that it should remain there permanently was held to be unlawful; but see *Vicar and Churchwardens of Wimbledon v Eden, Re St Mark's, Wimbledon* [1908] P 167, where *Durst v Masters* supra, was said to be apparently irreconcilable with *Liddell v Beale* supra, and not to be intended to lay down any principle other than that declared in *Westerton v Liddell, Horne etc* supra. As to the extent to which Privy Council decisions bind the ecclesiastical courts, see PARA 953 ante, 1271 post.

2 *Phillpotts v Boyd* (1875) LR 6 PC 435 (sculptured representations in high relief of the Ascension, the Transfiguration, and the Descent of the Holy Spirit at Pentecost), where the Privy Council held that the reredos erected for the purpose of decoration in Exeter Cathedral was not illegal, since it was not suggested that any superstitious reverence had been or was likely to be paid to any figures forming part of it. In *Ridsdale v Clifton* (1877) 2 PD 276, PC (metal crucifix in full relief on top of chancel screen with a row of candles on either side, which were lighted at evening service), it was held that in the absence of a proper faculty the crucifix was unlawfully set up and retained and that no such faculty ought to be granted, and the crucifix was ordered to be removed on the ground that there was a likelihood and danger of superstitious reverence, which the Privy Council in *Phillpotts v Boyd* supra, pronounced to be fatal to the lawfulness of all images and figures set up in a church. What is legal or illegal with respect to images, crosses, crucifixes and other things of the sort in churches depends on whether they do or do not, or may or may not, encourage or lead to idolatrous or superstitious worship in the place where they are to be put: *R v Bishop of London* (1889) 24 QBD 213 at 237, CA, per Lindley LJ; see also *Vincent v Rector and Churchwardens of St Magnus the Martyr etc* [1925] P 1 at 11, 12. Crucifixes and sculptured images have been allowed in the following cases: *Rector etc of Barsham, Suffolk v Parishioners of Barsham, Suffolk* [1896] P 256; *Vicar and Churchwardens of All Saints, Westbury* (1914) 30 TLR 389; *Hendon Parish Church* (1912) 28 TLR 438 (figures of our Lord on the Cross, the virgin Mary and St John on the chancel screen); *Re St Anselm, Pinner* [1901] P 202; *Vicar of Great Bardfield v All having Interest* [1897] P 185; *Hughes v Edwards* (1877) 2 PD 361 at 368 (sculptured representation of the crucifixion immediately over the holy table); *Re St Saviour's Church, Walthamstow* [1951] P 147, [1950] 2 All ER 812 (crucifix on the holy table or on a retable). A faculty has been granted for the erection of a group representing the crucifixion (*Grosvenor Chapel, South Audley Street* (1913) 29 TLR 286) and for a crucifix on a wall above a stool used for confession (*Rector and Churchwardens of Capl St Mary, Suffolk v Packard* [1927] P 289; *Re St Saviour's, Hampstead* [1932] P 134); for the erection of a figure of Our saviour in the act of blessing (*Re Christ Church, Ealing* [1906] P 289; for the retention of crucifixes surmounting a tabernacle, on a confessional table, above the pulpit, and on holy table (*Re St Mary, Tyne Dock* [1954] 2 All ER 339).

In the following cases faculties were refused, generally because there was thought to be danger of superstitious reverence: *Re St Lawrence, Pitlington* (1880) 5 PD 131 (decoration of reredos); *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80 (crucifixes); *Vicar of Paignton v All having Interest* [1905] P 111 (restoration of pre-Reformation screen and rood); *Vicar and Churchwardens of St John the Evangelist, Clevedon v All having Interest* [1909] P 6 (crucifix and figures on rood beam); *Markham v Shirebrook Overseers* [1906] P 239 (crucifixes over pulpits); *Davey v Hinde* [1903] P 221 (crucifixes); *Hudson v Fulford* (1913) 30 TLR 32; *Re Tenbury Parish Church* (1919) 36 TLR 188; *Field v Ommannay* (1920) 36 TLR 695; *Re St Luke's, Southport* (1920) 26 TLR 733 (all of which related to crucifixes outside churches); *Re St Mary, Tyne Dock* [1954] P 369, [1954] 2 All ER 339 (crucifix attached to processional cross declared illegal; faculty refused for statue of the Virgin Mary and Child Jesus). See also *Vicar and Churchwardens of St Paul, Bow Common v St Paul, Bow Common Inhabitants* [1909] P 245 (rood beam).

The case of *Vicar of Richmond and Chapelwardens of St Matthias, Richmond v All Persons having Interest etc* [1897] P 70, where it was said that a crucifix on a chancel screen could not not, on account of its position be regarded as a mere decoration, was disapproved in *Vincent v Rector and Churchwardens of St Magnus the Martyr etc.* supra, where it was held that the law is the same for every kind of image, including a crucifix or rood, and the question is whether there is danger of the image being used for worship or adoration.

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965. Receptacles for reserved sacrament.

In determining the lawfulness of a receptacle for the reserved sacrament, such as an aumbry, tabernacle or pyx, the court may be expected to have regard to the existence of episcopal sanction for the practice of reservation and to the conditions on which it is granted¹. There is now ample authority for the issue of a faculty for an aumbry in a church where the sacrament is reserved with the bishop's approval². In such cases it is normally stipulated that the aumbry is to be set in a wall of the church in a position not immediately behind or above a holy table³. So far from being an illegal ornament, an aumbry is properly to be regarded as being not an ornament at all, but simply a cupboard and part of the furnishings of the church⁴.

It has been held, on the other hand, that a tabernacle is an illegal ornament, and that its illegality is unaffected by the terms in which the bishop may have authorised reservation of the sacrament⁵. The question of the legality of a hanging pyx would seem to be governed by the same principles as that of a tabernacle, but in view of conflicting judicial opinions it is left in some uncertainty⁶.

¹ As to reservation of the sacrament, see PARA 986 post.

² *Re Lapford (Devon) Parish Church* [1954] P 416, [1954] 2 All ER 310; affd. on appeal to the Court of Arches [1955] P 205, [1954] 3 All ER 484. See also *Re St Mary, Tyne Dock* [1954] P 369, [1954] 2 All ER 339; *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441, [1958] 1 WLR 1183; *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057.

³ *Re Lapford (Devon) Parish Church* [1955] P 205 at 212-214, [1954] 3 All ER 484 at 489, 490, CA. But see *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057, where a faculty was granted for the reconstitution of an ancient aumbry behind the central subsidiary altar at the east end of the church.

⁴ *Re Lapford (Devon) Parish Church* [1954] P 416 at 427, [1954] 2 All ER 310 at 317; *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441, [1958] 3 All ER 441, [1958] 1 WLR 1183.

⁵ *Re Lapford (Devon) Parish Church* [1954] P 416, [1954] 2 All ER 310; affd. on appeal to the Court of Arches [1955] P 205, [1954] 3 All ER 484 (tabernacle held to be an illegal ornament, and faculty for it refused); *Re St Mary, Tyne Dock* [1954] P 369 at 375-377, [1954] 2 All ER 339 at 342, 343 (tabernacle held to be an illegal ornament, and faculty issued for its removal). See also *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80 at 103; *Davey v Hinde* [1901] P 95; subsequent proceedings [1903] P 221 (faculty issued for removal of tabernacles); *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289; subsequent proceedings [1928] P 69 (faculty for removal of tabernacles affirmed); *Roffe-Silvester v King* [1939] P 64, [1938] 4 All ER 147 (faculty for removal of tabernacles or aumbries affirmed).

⁶ The traditional position of the tabernacle and hanging pyx would appear to be immediately behind or above a holy table: cf. note 3 supra. The Dean of the Arches (Sir Philip Baker-Wilbraham) in *Re Lapford (Devon) Parish Church* [1955] P 205, [1955] 3 All ER 484, suggested that a hanging pyx was an illegal ornament, but in *Re St Nicholas, Plumstead (Rector and Churchwardens)* [1961] 1 All ER 298, [1961] 1 WLR 916, it was held by the Southwark Consistory Court that a pyx, although was not unlawful if its use was subsidiary to the lawful services of the church, and a faculty was granted for a pyx hanging from a baldachino which was around and over an altar in a chapel, for the purpose (approved by the bishop) of reserving the sacrament in it.

UPDATE

965 Receptacles for reserved sacrament

TEXT AND NOTE 3--Applied in *Re St Matthew's, Wimbledon* [1985] 3 All ER 670 and considered in *Re St John the Evangelist, Bierley* [1989] Fam 60 (faculty granted for siting of sacrament house, but had to be at least 15 feet from altar, as it could be regarded as tabernacle).

NOTES 4-6--See also *Re St Thomas, Pennywell* [1995] 2 WLR 154 (sacrament house not an illegal ornament), applied in *Re St John the Evangelist, Chopwell* [1995] 3 WLR 606.

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966. Holy tables and their appurtenances.

A convenient and decent table of wood, stone or other suitable material¹ must be provided in every church and chapel for the celebration of the Holy Communion, and must stand in the main body of the church or in the chancel where Morning and Evening Prayer are appointed to be said². As becomes the table of the Lord the table must be kept in a sufficient and seemly manner, and from time to time repaired³. In the time of divine service it must be covered with a covering of silk or other decent stuff, and at the time Holy Communion is celebrated it must be covered with a fair white linen cloth⁴. An additional holy table may be sanctioned on the ground of convenience and economy⁵. Where necessary, a credence table may lawfully be placed in a church as subsidiary to the administration of the Holy Communion⁶.

The provisions of certain articles of communion plate is obligatory. Thus, in every church and chapel there must be provided a chalice for the wine and a paten or other vessel for the bread, of gold, silver or other suitable metal; a bason for the reception of alms; and a cruet or flagon for bringing the wine to the communion table⁷.

It is lawful to place vases of flowers on the holy table and to keep them there during the performance of divine service, provided they are used as decorations only⁸. The placing of candlesticks on or behind the holy table is not unlawful, and, although the use of two single candlesticks is the traditional and recognised use in the Church of England, it is within the discretion of a diocesan chancellor to allow the use of more than two in a proper case⁹. The placing of a sanctuary lamp on the altar of a memorial chapel in a church has been authorised by faculty¹⁰. The ceremonial use of lights has, however, been held to be illegal¹¹.

A sanctuary gong and sanctuary bells have been held to be illegal ornaments¹², and the court has refused to sanction by faculty alterations to enable one of the bells of a church to be used from the interior of the church as a sanctus bell¹³.

1 Until the passing of the Holy Table Measure 1964 (repealed) the law had required that the principal holy table in a parish church should be movable and not made of stone.

2 Revised Canons Ecclesiastical, Canon F2 para 1; Book of Common Prayer, rubric preceding Order for the Administration of the Lord's Supper or Holy Communion. Any dispute as to the position where the table is to stand is to be determined by the Ordinary: Revised Canons Ecclesiastical, Canon F2 para 1. There is nothing illegal in elevating the table above the floor of the church: *St Andrew's, Haverstock-Hill* (1909) 25 TLR 408. It is lawful to curtain the back and north and south ends of the table, but not so as to prevent the minister, if so desirous, from officiating in the Communion at the north end of the table: *Vicar and Churchwardens of Wimbledon v Eden, Re St Marks's, Wimbledon* [1908] P 167.

3 Revised Canons Ecclesiastical, Canon F2 para 2.

4 Ibid Canon F2 para 2; Book of Common Prayer, rubric preceding Order for the Administration of the Lord's Supper or Holy Communion. See also *Elphinstone v Purchas* (1870) LR 3 A & E 66. In every parochial church and chapel a sufficient number of fair white linen cloths for the covering of the table and other fair linen cloths for the priest's use during Holy Communion must be provided and maintained: Revised Canons Ecclesiastical, Canon F4.

5 *Re Holy Trinity Church, Stroud Green* (1887) 12 PD 199; *Vicar etc of St Peter's, Eaton Square v Parishioners of St Peter's, Eaton Square* [1894] P 350; *Rector of St Anne's, Limehouse v Parishioners of St Anne's, Limehouse* [1901] P 73; *Vicar of Paignton v All having Interest* [1905] P 111; *Re St James the Great, Buxton, Vicar of St John the Baptist, Buxton v Parishioners of St John the Baptist, Buxton* [1907] P 368; *Re St Mark's, Marylebone Road, Vicar of St Mark's v Parishioners of St Mark's* [1898] P 114; *St Michael, Bromely* (1908) 25 TLR 95; *St Paul's, Brentford* (1909) 25 TLR 228. The circumstances which warrant the faculty and the structural and other

arrangements to be made are matters to be decided by the court granting the faculty in each case: *Re St James the Great, Buxton, Vicar of St John the Baptist, Buxton v Parishioners of St John the Baptist, Buxton* supra. A third holy table may be sanctioned: *St Margaret's, Toxteth Park* (1924) 40 TLR 687, where it was said that a stronger case must be made out for three than two; *Re St Mary, Tyne Dock* P 369 at 381, [1954] 2 All ER 339 at 345.

6 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report at 187, overruling on this point *Faulkner v Litchfield and Stearn* (1845) 1 Rob Eccl 184.

7 Revised Canons Ecclesiastical, Canon F3 para 1. The obligation to provide and pay for these and other necessities is laid on the parochial church council by Canon F14. It is the minister's duty to see that the communion plate is kept washed and clean, ready for Holy Communion: Canon F3 para 2. A ciborium is not an illegal ornament, whether used during the administration of the Holy communion or (in a church where reservation has been approved) as a receptacle for the reserved sacrament: *Re St Mary, Tyne Dock* (No. 2) [1958] P 156, [1958] 1 All ER 1.

8 *Elphinstone v Purchas* (1870) LR 3 A & E 66.

9 *Re St Saviour's Church, Walthamstow* [1951] P 147, [1950] 2 All ER 812, where, having regard to past use and there being no danger of ceremonial use, six candlesticks were allowed. Six were also allowed in *Re St Andrew's, Haverstock-Hill* (1909) 25 TLR 408; *Re St George's, Southall* [1952] 1 All ER 323; *Re St Mary, Tyne Dock* [1954] P 369 at 379, [1954] 2 All ER 339 at 344. In *Re Holy Trinity Church, Woolwich* [1949] P 369, six were allowed provided not more than two were used at once, pending further order to be made after the diocesan bishop's views had been ascertained. Contrast *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289, where four of six candlesticks were ordered to be removed, the candlesticks having, it appears, been put to ceremonial use; *Re St Saviour's, Hampstead* [1932] P 134, where a faculty was given for the retention of two of six candlesticks, but removal of the other four was not ordered, provided a satisfactory undertaking was given as to their use. These decisions must now be regarded as subject to qualification: see *Re St Saviour's Church, Walthamstow* supra.

10 *Re All Saints, Leamington Priors* [1963] 2 All ER 1062, [1963] 1 WLR 806.

11 See PARA 959 ante.

12 *Re St Mary, Tyne Dock* [1954] P 369 at 379, [1954] 2 All ER 339 at 344, following *Elphinstone v Purchas* (1870) LR 3 A & E 66; on appeal sub nom. *Hebbert v Purchas* (1871) LR 3 PC 605; *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289.

13 *Vicar and Churchwardens of St John the Evangelist, Clevedon v All having Interest* [1909] P 6; *Re St Mary, Tyne Dock* (No. 2) [1958] P 156, [1958] 1 All ER 1.

UPDATE

966 Holy tables and their appurtenances

TEXT AND NOTES 1, 2--See *Re St Stephen Walbrook* [1987] 2 All ER 578 (marble sculpture capable of being a holy table; faculty for installation granted).

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967. Architectural features.

The court may issue a faculty for the erection of chancel screen gates on being satisfied in its discretion that the erection would be of utility¹. A reredos is lawful unless it is likely to be the object of superstitious reverence². As to the legality of a baldachino there are conflicting decisions of consistory courts; according to the most recent authority it may be regarded as being not an ornament but an architectural feature for which a faculty may properly be granted³.

1 *Vicar etc of St James Norland v Parishioners of St James Norland* [1894] P 256; *Vicar of Paignton v All having Interest* [1905] P 111; *Re St Agnes* (1885) 11 PD 1; *Re St John's, Isle of Dogs* (1888) Trist 67. The question whether a chancel screen with gates is of practical utility in modern times would usually be answered in the affirmative.

2 See PARA 964 ante, where the cases concerning the legality of crucifixes and images have been considered. In *R v Bishop of London* (1889) 24 QBD 213, CA, it was held that where a representation to the bishop to allow proceedings to have the reredos in St Paul's Cathedral removed as being unlawful was refused because in his view such litigation entailed mischievous results, the bishop's answer was sufficient. In *R v Bishop of London, Leighton's Case* [1891] 2 QB 48, where a similar representation had been made, except that it alleged that the reredos had in fact encouraged idolatrous practices, and the bishop, relying on his former consideration of the question, had refused the petition, Hawkins J held that the answer was sufficient. These decisions were affirmed in the House of Lords, which held in both cases that, whether the bishop's reasons were good or bad, he had acted within his jurisdiction and honestly exercised his discretion and judgment: *Allcroft v Lord Bishop of London, Lighton v Lord Bishop of London* [1891] AC 666, HL. See also *Vicar of Great Bardfield v All having Interest* [1897] P 185 at 189.

3 *Re St Nicholas, Plumstead (Rector and Churchwardens)* [1961] 1 All ER 298, [1961] 1 WLR 916. For earlier decisions to the contrary, see *White v Bowron* (1873) LR 4 A & E 207; *Grosvenor Chapel, South Audley Street* (1913) 29 TLR 286; *Grosvenor Chapel, South Audley Street (No. 2)* (1913) 29 TLR 411.

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968. Memorial tablets and inscriptions.

The granting of a faculty for a memorial tablet in a church is a matter not of right but of privilege¹. In modern practice the tendency has been for chancellors, influenced largely, it seems, by aesthetic considerations, to restrict the privilege to exceptional cases, for example where the person commemorated has rendered outstanding service to the church. Control is exercised not only over the design of a memorial but also over the wording of the commemorative inscription. Reported decisions have been concerned mainly with the legality of prayers for the dead².

1 *Dupuis v Parishioners of Ogbourne St George* [1941] P 119.

2 See PARA 1044 post. As to memorials in churchyards, see PARA 1316 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/B. ORNAMENTS, DECORATIONS AND FURNISHINGS/969. Miscellaneous ornaments.

969. Miscellaneous ornaments.

A holy water stoup has been held to be an illegal ornament¹, but it appears that a cruet of holy oil is not illegal². Incense vessels can be regarded as susceptible of lawful use, and where the diocesan bishop had sanctioned some use of incense the court declined to issue a faculty for the removal of a thurible and an incense boat³. A confession table and chair may be sanctioned where they are intended for use in the hearing of voluntary confessions⁴ as, it seems, may a confessional box⁵.

A faculty may be granted for the display of the royal arms to signify the Sovereign's supremacy without obtaining the royal consent⁶.

1 *Hebbert v Purchas* (1871) LR 3 PC 605 at 651; *Davey v Hinde* [1903] P 221; *Rector and Churchwardens of Capel St Mary, Suffolk v Packard* [1927] P 289 at 306. See also *Re St Mary, Tyne Dock* [1954] P 369 at 382, [1954] 2 All ER 339 at 349, where, as the stoup was in the vestry, no order for removal was made.

2 *Re St Mary, Tyne Dock* [1954] P 369 at 382, [1954] 2 All ER 339 at 346.

3 *Re St Mary, Tyne Dock* [1954] P 369 at 380, [1954] 2 All ER 339 at 344, 345. For a case where an order for the removal of a thurible was affirmed with some hesitation, see *Roffe-Silvester v King* [1939] P 64 at 94, [1938] 4 All ER 147 at 165.

4 *Re St Mary, Tyne Dock* [1954] P 369 at 380, [1954] 2 All ER 339 at 345 where, in the absence of evidence of compulsory confession or superstitious reverence, a confirmatory faculty until further order was granted.

5 *Cf. Roffe-Silvester v King* [1939] P 64, [1938] 4 All ER 147, where the consistory court's order for the removal of a confessional box was set aside by the Court of Arches. See also *Rector and Churchwardens of Capel St Mary, Suffolk v Packard* [1927] P 289. In some earlier, cases, on the other hand, confessional boxes had been removed by faculty as being not part of the regular church furniture and fittings recognised by the Church of England: see eg *Bradford v Fry* (1878) 4 PD 93; *Davey v Hinde* [1901] P 95; *Davey v Hinde* [1903] P 221.

6 *Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n; *Re St Paul Battersea* [1954] 2 All ER 595, [1954] 1 WLR 920. Where, however, the royal arms of the Kingdom of England are sought to be displayed purely for purposes of decoration, the Sovereign's consent is required: *Re St Paul, Battersea* supra. The flag proper to be flown upon a church is the cross of St George, and in the first quarter an escutcheon of the arms of the see in which the church is situated. As to the proper flag for churches in Wales, see PARA 325 note 2 ante.

UPDATE

969 Miscellaneous ornaments

NOTE 1--Holy water stoups have been held not to be illegal ornaments: *Re St John the Evangelist, Chopwell* [1995] 3 WLR 606.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/C. ORNAMENTS OF MINISTERS AND OTHERS/970. Ministers' vestures.

C. ORNAMENTS OF MINISTERS AND OTHERS

970. Ministers' vestures.

The law on the subject of minister's vestures¹ is based on the provisions of the Ornaments Rubric in the Book of Common Prayer², as confirmed, with modifications, by modern canons³. The rubric, following the Act of Uniformity 1558⁴, prescribes that such ornaments of the ministers at all times of their ministration shall be retained and be in use as were in the Church of England by the authority of Parliament in the second year of Edward VI. The legal effect of that provision was formerly much disputed⁵, but the question has ceased to have serious practical importance since the enactment of the Vestures of Ministers Measure 1964⁶ and the modern canons which, while retaining the provisions of the Ornaments Rubric and of the Act of Uniformity 1558, allow considerable latitude in their application at the present day⁷.

Thus at Morning and Evening Prayer the minister is required to wear a cassock, a surplice and a scarf, and for the occasional offices⁸ he must wear a cassock and a surplice with scarf or stole⁹. At the Holy Communion the celebrant, as also the gospeller and the epistoler, if any, must wear with the cassock either a surplice with scarf or stole, or a surplice or alb with stole and cope, or and alb with customary vestments¹⁰. A minister may at his discretion wear a cope on any appropriate occasion¹¹, and when he wears a scarf he may, if so entitled, also wear the hood of his degree¹². The use of a black gown for preaching, though no longer of common occurrence, is still, it seems, permissible¹³.

The freedom thus accorded to the minister is limited, however, by the provision that he must not change the form of vesture in use in the church or chapel in which he officiates unless he has ascertained by consultation with the parochial church council of the parish that such a change will be acceptable¹⁴. Any case of disagreement on this matter may be referred to the diocesan bishop, whose direction must be obeyed¹⁵.

The fact that a form of vesture is not specifically authorised by these provisions is not in itself a ground for regarding it as unlawful. It has been held that a biretta may lawfully be used by the minister during divine service as a protection to the head when needed; if, however, it is used as a vestment in the services of the church there is room for doubt concerning its legality¹⁶. A humeral veil has been held to be outside the scope of the faculty jurisdiction¹⁷.

1 As to mitres and other vestures of bishops, see PARA 477 ante.

2 See PARA 960 ante.

3 See Revised Canons Ecclesiastical, Canon B8, which largely follows the wording of the Vestures of Ministers Measure 1964 (repealed).

4 The Act of Uniformity 1558, s 13 (repealed), contained words (not adopted in the Ornaments Rubric) which allowed for the possibility of future amendment by order of the Queen, and in 1566 advertisements were issued limiting the vestures which might be worn. In consequence it came to be held that the surplice (and not the vestures authorised by the First Prayer Book of Edward VI, namely the alb, vestment, and tunicle: see PARA 960 note 3 ante) must be used by parish ministers at all times of their public ministrations, and that a cope was not to be worn except at the ministration of the Holy Communion in cathedral and collegiate churches: *Ridsdale v Clifton* (1877) 2 PD 276, PC. The correctness of this decision was, however, challenged in the light of subsequent historical research: cf. the Report of the Royal commission on Ecclesiastical Discipline 1906 (Cd. 3040) PARA 41.

5 See PARA 960 note 3 ante.

6 The Measure has since been repealed, but see note 2 supra.

7 Vestures of Minister Measure 1964, s 1 (repealed); Revised Canons Ecclesiastical, Canon B8. While recognising, in effect, the diversity of existing practice, Canon B8 para 5 (following the preamble to the Measure) declares that the Church of England does not attach any particular doctrinal significance to the diversities of permitted vesture and that a vesture worn by a minister in accordance with the provisions of the canon is not to be understood as implying any doctrines other than those now contained in the formularies of the Church of England.

8 As to the occasional offices, see PARA 936 note 6 ante.

9 Revised Canons Ecclesiastical, Canon B8 para 1.

10 Ibid Canon B8 para 2. 'Customary vestments' appears to contemplate the wearing of a chasuble: see Appendix to the 145th Report of the Ecclesiastical Committee on the Vestures of Ministers Measure (H, of C, Paper (1963-64) no. 257).

11 Revised Canons Ecclesiastical, Canon B8 para 3.

12 Ibid Canon B8 para 4.

13 *Re Robinson, Wright v Tugwell* [1897] 1 Ch 85, CA. See PARA 303 note 5 ante.

14 Revised Canons Ecclesiastical, Canon B8 para 6. As to the requirement of consultation with the parochial church council, cf. *Re Union of Benefices of Whippingham and East Cowes, St James, Derham v Church Commissioners for England* [1954] AC 245, [1954] 2 All ER 22, PC, where it was held that 'consultation' did not necessitate the taking of a vote by the council. However, that case might well be distinguished on the ground that the relevant statutory provision did not require it to be established that the proposed change would be acceptable to the council (as did the Vestures of Ministers Measure 1964, s 2 (1) (repealed)), but this is implied, See also PARA 987 note 5 post.

15 Revised Canons Ecclesiastical, Canon B8 para 6 proviso.

16 *Elphinstone v Purchas* (1870) LR 3 A & E 66; affd. sub nom. *Hebbert v Purchas* (1871) LR 3 PC 605.

17 *Re St Mary, Tyne Dock* [1954] P 369 at 382, [1954] All ER 339 at 346.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(1) REGULATION OF PUBLIC WORSHIP/(ii) Matters of Ritual and Ceremonial/C. ORNAMENTS OF MINISTERS AND OTHERS/971. Wearing of official robes.

971. Wearing of official robes.

Any person holding any judicial or civil or corporate office may attend and be present at any place of public meeting for religious worship in the robe, gown or other peculiar habit of his office, or with the ensign or insignia of or belonging to it, and such attendance does not entail any forfeiture of office or other penalty¹.

In the conduct of public worship a reader should wear cassock, surplice, the badge of his office and the hood of his degree².

1 Office and Oaths Act 1867, s 4.

2 Regulations respecting Readers, adopted by the Convocations of Canterbury and York on 23rd, 24th May 1939 and 20th May 1940 respectively para 11. As to readers, see PARA 762 et seq ante. A reader usually wears a blue scarf.

UPDATE

971 Wearing of official robes

TEXT AND NOTE 1--Repealed: Statute Law (Repeals) Act 1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/972. The nature of the sacrament.

(2) HOLY COMMUNION

972. The nature of the sacrament.

The Holy Communion is one of the two sacraments (the other being baptism¹) which are declared to have been ordained by Christ in the Gospel². It is also called the Lord's Supper³, and in current usage it is often referred to as the Eucharist. The celebration of the Holy Communion, including consecration of the elements of bread and wine and their reception by the communicants⁴, constitutes in theological terms the sacrament of the body and blood of Christ⁵.

1 See PARA 990 et seq post.

2 See Articles of Religion 25. See also 1 Cor. 11: 23-26; Luke 22 : 17.

3 Book of Common Prayer, Order for the Administration of the Lord's Supper or Holy Communion. See also Articles of Religion 28.

4 The sacrament is to be delivered and ministered to the people in both kinds, ie both bread and wine, except necessity otherwise require: Sacrament Act 1547, s 8; Articles of Religion 30. As to the persons admitted to communion, see PARA 977 post.

5 Book of Common Prayer, Order for the Administration of the Lord's Supper or Holy Communion, first exhortation; Catechism; Articles of Religion 28.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/973. Persons authorised to officiate.

973. Persons authorised to officiate.

No person is permitted to consecrate and administer the sacrament of Holy Communion unless he has been ordained priest by episcopal ordination¹. Hence a deacon may not officiate as celebrant; his functions include, however, assisting the priest when he ministers the Holy Communion, helping him in its distribution and reading the holy scriptures². Moreover, a lay person specially authorised by the bishop under regulations made by the General Synod³ may distribute the sacrament to the people⁴; and, subject to the bishop's general directions, the epistle and the Gospel may at the invitation of the minister be read by a lay person⁵.

1 Revised Canons Ecclesiastical, Canon B12 para 1. As to the minister's vesture when celebrating Holy Communion, see PARA 970 ante.

2 Book of Common Prayer, Form and Manner of Making of Deacons, bishop's examination.

3 Special procedural requirements are applicable to the making of such regulations by the General Synod: see the Synodical Government Measure 1969, s 2 (1), Sch. 2, art. 7, and PARA 403 ante.

4 See the Revised Canons Ecclesiastical, Canon B 12 para 3 (amended by Amending Canon No. 1). Thus a deaconess (see Canon D 1 para 3 (b) (substituted by Canon promulgated 20th February 1973), and PARA 759 ante) or a reader (see Canon E4 para 2b, and PARA 763 ante) may be so authorised.

5 Ibid Canon B12 para 4.

UPDATE

973 Persons authorised to officiate

TEXT AND NOTES--As to right to preside at Holy Communion where General Synod has exercised its powers with regard to co-operation with other churches under Church of England (Ecumenical Relations) Measure 1988, see 1988 Measure s 3 (see PARA 1186A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/974. Obligatory celebration on certain days.

974. Obligatory celebration on certain days.

Celebration of the Holy Communion is obligatory on certain days, but the minimum requirements stated below may be subject, it seems, to the presence of a sufficient number of communicants¹. In every cathedral church the Holy Communion must be celebrated at least on all Sundays and other feast days, on Ash Wednesday, and on other days as often as may be convenient, according to the statutes² and customs of each church³. In every parish church, except for some reasonable cause approved by the diocesan bishop, Holy Communion must be celebrated at least on all Sundays and principal feast days and on Ash Wednesday⁴. In churches and chapels dependent on a parish church it is to be celebrated as regularly and frequently as may be convenient, subject to the direction of the Ordinary⁵.

1 See PARA 976 post.

2 As to cathedral statutes, see PARA 610 ante.

3 Revised Canons Ecclesiastical, Canon B13 para 1. In every cathedral church the canons residentiary and the other ordained ministers, and in collegiate churches and colleges all the ordained ministers, are to receive the Holy Communion every Sunday at the least, unless they have a reasonable cause to the contrary: Canon B 13 para 2; Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion.

4 Revised Canons Ecclesiastical, Canon B14 para 1.

5 Ibid Canon B14 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/975. Place of celebration.

975. Place of celebration.

The general rule is that no minister may celebrate the Holy Communion elsewhere than in a consecrated building within his cure or other building licensed for the purpose, unless he has permission so to do from the diocesan bishop¹. At all times he may celebrate the Holy Communion in any private house in which there is any person desirous of receiving the sacrament who is sick or dying or so importent that he cannot go to church². Where in any house there is a chapel dedicated and allowed by the ecclesiastical laws of the realm, no chaplain ministering in that house may celebrate the Holy Communion in any other part of it except in that chapel³.

1 Revised Canons Ecclesiastical, Canon B40.

2 Ibid Canon B37 para 2; Canon B40 proviso.

3 Ibid Canon B41 para 1. He is enjoined to do the same seldom upon Sunday and other great feast days, so that the residents in the house may resort to their parish church and there attend divine service: Canon B41 para 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/976. Number of communicants.

976. Number of communicants.

The Holy Communion is not to be celebrated unless there is a convenient number to communicate with the priest according to his discretion; but the priest's discretion appears to be limited by a further provision to the effect that even if there are not more than twenty qualified communicants in the parish there is to be no Communion unless four, or at least three, communicate with him¹. It seems that, in recent times at any rate, there has been much latitude in the observance of these requirements. The minister is required to give due notice of the celebration of the Holy Communion², and persons intending to partake of it are required to signify their names to him at least some time the day before³. This latter requirement has largely, if not entirely, fallen into disuse⁴.

1 Book of Common Prayer, rubrics at the end of the Order for the Administration of the Lord's Supper or Holy Communion. It has been held to be an ecclesiastical offence for a priest to celebrate Communion without at least three other communicants (*Parnell v Roughton* (1874) LR 6 PC 46; *Clifton v Ridsdale* (1876) 1 PD 316), except when administering to a sick person (see PARA 1046 post). As to the rubrics, see PARA 955 ante.

2 He must give warning of it publicly during the time of divine service on the Sunday or some holy day immediately preceding: Book of Common Prayer, rubric following the Creed in the Order for the Administration of the Lord's Supper or Holy Communion.

3 Book of Common Prayer, rubric preceding the Order for the Administration of the Lord's Supper or Holy Communion.

4 As to the authority of the rubrics and the divergence between law and practice, see PARAS 955-958 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/977. Qualifications of communicants.

977. Qualifications of communicants.

Subject to certain exceptions¹, the following persons are entitled to be admitted to the Holy Communion: (1) members of the Church of England² who have been confirmed in accordance with the rites of that Church or are ready and desirous to be so confirmed or who have been otherwise episcopally confirmed with unction or with the laying on of hands³; (2) baptised persons who are communicant members of other Churches which subscribe to the doctrine of the Holy Trinity and who are in good standing in their own church⁴; (3) any other baptised persons authorised to be admitted under regulations of the General Synod⁵; and (4) any baptised person in immediate danger of death⁶. Where any minister is in doubt as to the admission of a person to the Holy Communion he must refer the matter to the diocesan bishop or other Ordinary⁷ and follow his guidance on the matter⁸.

1 See PARA 978 post.

2 As to membership of the Church of England, see PARA 346 ante.

3 Revised Canons Ecclesiastical, Canon B15A para 1 (a) (added by Canon promulgated 9th July 1972 under the Admission to Holy Communion Measure 1972, s 1).

4 Revised Canons Ecclesiastical, Canon B15A para 1 (b) (added by Canon promulgated 9th July 1972). If any such person regularly receives Communion over a long period which appears likely to continue indefinitely the minister must set before him the normal requirements of the Church of England for communicant status in that Church: Canon B15A para 2 (added by Canon promulgated 9th July 1972).

5 Ibid Canon B15A para 1 (c) (added by Canon promulgated 9th July 1972).

6 Ibid Canon B15A para 1 (d) (added by Canon promulgated 9th July 1972).

7 See PARA 978 note 3 post.

8 Revised Canons Ecclesiastical, Canon B15A para 3 (added by Canon promulgated 9th July 1972).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/978. Exclusion of notorious offenders.

978. Exclusion of notorious offenders.

A minister must not without lawful cause¹ deny the sacrament to any person who devoutly and humbly desires it². If he is persuaded that a person who presents himself to be a partaker of the Holy Communion ought not to be admitted to it by reason of malicious and open contention with his neighbours, or other grave and open sin without repentance, the minister must give an account of it to the diocesan bishop or other Ordinary³ and obey his order and direction in the matter; but until this procedure has been followed, and until in accordance with such order and direction he has warned the person concerned not to come to the Lord's table, the minister is not to refuse him the sacrament⁴, unless it be a case of grave and immediate scandal to the congregation; in which case the minister is not to admit him, but must give an account to the Ordinary within seven days and obey the Ordinary's order and direction. Before issuing his order and direction in relation to any such person the Ordinary must afford to him an opportunity for interview⁴.

1 The question may be raised whether 'lawful cause' is limited to the matters specified in the rubric referred to in note 4 *infra*, and in particular whether it could include a breach of church discipline in relation to a marriage which was valid according to the general law. As regards the modern statutory exceptions to the prohibited degrees of relationship, it has been held that the sacrament could not be refused to parties whose marriage was valid as a civil contract under the Deceased Wife's Sister's Marriage Act 1907: *Banister v Thompson* [1908] P 362; *R v Dibdin* [1910] P 57, CA; *affd. sub nom. Thompson v Dibdin* [1912] AC 533, HL. There seems to be no reported decision on the question whether the sacrament may be withheld from a divorced person who has remarried within the lifetime of a former spouse, although in practice bishops have assumed the right to exercise a discretion in this matter. As to the statutory provision enabling a clergyman to refuse to solemnise, or permit the solemnisation of, such a remarriage in church, see PARA 1005 post.

2 Sacrament Act 1547, s 8.

3 For the meaning of 'Ordinary', see PARA 458 note 3 *ante*. In the present context it includes, in the case of the Ordinary being the diocesan bishop and the see being vacant, the archbishop of the province, or, in the case of the archbishopric being vacant or the vacant see being Canterbury or York the archbishop of the other province: Revised Canons Ecclesiastical, Canon B16 para 2.

4 Book of Common Prayer, introductory rubric to the Order for the Administration of the Lord's Supper or Holy Communion (amended by the Prayer Book (Miscellaneous Provisions) Measure 1965, s 3 (1) (repealed)); Revised Canons Ecclesiastical, Canon B16 para 1. This is sometimes referred to as 'lesser excommunication'. See also PARA 1384 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/979. Obligations attached to communicant status.

979. Obligations attached to communicant status.

A duty is imposed by canon on all who have been confirmed to receive the Holy Communion regularly, and especially at the festivals of Christmas, Easter and Whitsun¹. An older provision, contained in the Book of Common Prayer, is to the effect that every parishioner shall communicate at least three times in the year, of which Easter is to be one². While these obligations are primarily of a religious nature, the extent to which they are fulfilled may be a factor in determining a person's legal right to participate in synodical government³, or his qualifications for appointment to certain offices, for example those of churchwarden⁴ or diocesan chancellor⁵.

1 Revised Canons Ecclesiastical, Canon B15 para 1. The minister must teach the people especially before these festivals, to come to Communion with the preparation required by the Book of Common Prayer: Canon B15 para 2.

2 Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion.

3 See PARAS 420, 510, 529 ante.

4 See PARA 543 ante.

5 See PARA 1276 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/980. The ante-Communion.

980. The ante-Communion.

The order for Holy Communion as set forth in the Book of Common Prayer comprises two main parts: (1) the ante-Communion, as it is commonly called¹, which concludes with the prayer for the church militant; and (2) the Communion proper. It is directed by rubric² that the ante-Communion be said on Sundays and other holy days³, even though there be no Communion following⁴; but this requirement is now, it seems, rarely observed. Directions for the conduct of this part of the service include provision for the giving of appropriate notices⁵ and for the delivery of a sermon or homily⁶, after which the priest is to return to the holy table and begin the offertory by reading one or more of the prescribed sentences⁷. At this stage a collection is to be taken⁸; and if there be a Communion following the bread and wine are then to be placed upon the table⁹.

1 It is so designated eg in the alternative service of Holy Communion, Series 2, published in 1967.

2 See the Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion. As to the rubrics, see PARA 955 ante.

3 As to holy days, see PARA 950 ante.

4 The reading of Morning Prayer and (on the appointed days) the Litany is also prescribed: see PARA 987 post. These services may be used in conjunction with the service of Holy Communion or in varying order as separate services.

5 See the Book of Common Prayer, rubric following the creed in the Order for the Administration of the Lord's Supper or Holy Communion. See also PARA 948 ante.

6 See the Book of Common Prayer, rubric following the creed in the Order for the Administration of the Lord's Supper or Holy Communion. See also PARA 946 ante. The sermon is not itself part of the administration of Holy Communion according to the Book of Common Prayer (*Re Robinson, Wright v Tugwell* [1897] 1 Ch 85 at 96, CA), although both Series 2 and Series 3 Holy Communion have provision for a sermon, and it is increasingly the practice today to make Holy Communion, with a sermon, one of the principal Sunday services.

7 See the Book of Common Prayer, rubric following the Creed in the Order for the Administration of the Lord's Supper or Holy Communion.

8 See the Book of Common Prayer, rubric following the offertory sentences in the Order for the Administration of the Lord's Supper or Holy Communion, and see PARA 981 post.

9 See the Book of Common Prayer, rubric following the offertory sentences in the Order for the Administration of the Lord's Supper or Holy Communion.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/981. The collection.

981. The collection.

While the offertory sentences are being read the deacons, churchwardens or other fit person appointed in that behalf¹ are to receive the alms for the poor and other devotions of the people in a decent bason provided for the purpose by the parish, and reverently bring it to the priest, who humbly presents it and places it upon the holy table². After the service the money given at the offertory is to be disposed of to such pious and charitable uses as the minister and churchwardens think fit, and if they disagree it is to be disposed of as the Ordinary appoints³. An announcement of the objects of the collection beforehand is not obligatory, but is not unlawful; and when Holy Communion is combined with another service it is not an offence to take two collections from the same gathering⁴.

1 The appointment of another fit person may be made by the priest: *Cope v Barber* (1872) LR 7 CP 393 at 403, per Willes J. The 'other fit person' refers to a layman and, although a priest or bishop may make the collection, in doing so he performs a lay function, and is not ministering or celebrating any sacrament, divine service, rite or office within the meaning of the Ecclesiastical Courts Jurisdiction Act 1860, s 2; *Cope v Barber* supra. As to that provision, which relates to riotous behaviour, see PARA 1048 post.

2 Book of Common Prayer, rubric following the offertory sentences in the Order for the Administration of the Lord's Supper or Holy Communion. Unless otherwise ordered by the bishop a practice in the parish church according to the rubric must be followed: see *Howell v Holdroyd* [1897] P 198. As to the provision of the bason for the alms, see Revised Canons Ecclesiastical, Canon F3 para 1.

3 See the Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion. These provisions are not affected by the Parochial Church Councils (Powers) Measure 1956, s 7 (iv): see *Marson v Unmack* [1923] P 163. As to the disposal of such money generally, see Opinions of the Legal Board (5th Edn 1973) II/84, III/35-37. As to collections made in church at other services, see PARAS 576, 585 ante.

4 *Marson v Unmack* [1923] P 163.

UPDATE

981 The collection

TEXT AND NOTE 3--The power of a parochial church council to determine, jointly with minister, the objects for which moneys collected in church are to be given, is no longer subject to directions contained in the Book of Common Prayer: 1956 Measure s 7(iv); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/982. Provision for Communion.

982. Provision for Communion.

The churchwardens of every parish, with the advice and direction of the minister, must provide a sufficient quantity of bread and of wine for the communicants¹. The bread may be leavened or unleavened², but must be of the best and purest wheat flour that can conveniently be got; and the wine must be the fermented juice of the grape, good and wholesome³. The bread is to be brought to the communion table in a paten or convenient box, and the wine in a convenient cruet or flagon⁴. The table is to be covered at the Communion time with a fair white linen cloth⁵.

1 Revised Canons Ecclesiastical, Canon B17 para 1. As to the obligation upon the parochial church council to provide and pay for these and other requisites, see Canon F14 (which does not specifically relate to the bread and wine), and the Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion.

2 This provision, introduced by the Prayer Book (Miscellaneous Provisions) Measure 1965, s 3 (3) (repealed), seems clearly to establish the legality of wafer bread, notwithstanding any past decision to the contrary: see eg *Hebbert v Purchas* (1871) LR 3 PC 605. It suffices that the bread be 'such as is usual to be eaten': Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion. This is similar to the rubric in the Second Prayer Book of Edward VI; the First Prayer Book of Edward VI required unleavened bread to be used. Series 2 and Series 3 Holy Communion refer simply to 'the bread'.

3 Revised Canons Ecclesiastical, Canon B17 para 2.

4 Ibid Canon B17 para 3. As to the provision of Communion plate, including a chalice, and the minister's duty to keep it clean, see Canon F3, and PARA 966 ante.

5 See ibid Canon F2 para 2, and PARA 966 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/983. Position of celebrant.

983. Position of celebrant.

The rubric in the Book of Common Prayer directs that the priest shall say the opening prayers standing at the north side of the table¹. The intended effect of this rubric, even when considered in relation to the circumstances of 1662², has long been a matter of dispute. The principal questions argued have been (1) whether, when the table is placed altarwise, the priest is required to stand at the north end or at the west side of the table; and (2) whether he is at liberty to adopt one position during the opening prayers and another position during the prayer of consecration.

Decisions of the courts have been such as to allow in practice a considerable latitude of interpretation. In particular it is not to be regarded as an ecclesiastical offence for the priest to stand, at any stage of the service, on the west side of the table³. There is no specific warrant in the Book of Common Prayer for the practice adopted in many churches whereby the priest stands behind the table (namely on the east side) and celebrates facing westwards⁴.

The Holy Communion must be celebrated distinctly, reverently and in an audible voice⁵.

1 Book of Common Prayer, rubric at the beginning of the Order for the Administration of the Lord's Supper or Holy Communion, following the Second Prayer Book of Edward VI. The rubrics in the First Prayer Book of Edward VI directed the priest to stand 'humbly afore the middes of the Altar'.

2 At the period when the rubric was framed the table was, at the time of the Holy Communion, placed in almost all parish churches lengthwise in the body of the church or chancel, with the smaller ends at the east and west and the longer sides at the north and south. The rubric was framed with reference to this position of the table. When at a later period the holy table came to be placed altarwise, a controversy as to the position of the priest arose, which was still being carried on when the present Prayer Book came into force, but the rubric was left unaltered and no attempt was made to resolve the controversy.

3 *Read v Bishop of Lincoln* [1892] AC 644 at 663-665, PC, in which *Hebbert v Purchas* (1871) LR 3 PC 605, and *Ridsdale v Clifton* (1877) 2 PD 276, PC, were considered; see also *Read v Bishop of Lincoln* [1891] P 9 at 33 et seq (Court of the Archbishop of Canterbury); affd. on other points [1892] AC 644, PC. In the same proceedings consideration was given to a related question arising under the rubric immediately preceding the prayer of consecration, where reference is made to the breaking of the bread 'before the people'; and it was held that all the manual acts (of which the breaking of the bread is one) must be so performed as to be visible to the communicants properly placed. In *Ridsdale v Clifton* (1877) 2 PD 276 at 343, the Privy Council had held that the priest must not interpose his body so as intentionally to prevent that result.

4 There is probably, however, little likelihood of such issues being made the subject of litigation in the future, for the reasons advanced in PARA 958 ante. See also PARAS 941, 955 ante.

5 Revised Canons Ecclesiastical, Canon B13 para 1; Canon B14 para 1.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/984. Ceremonies connected with consecration.

984. Ceremonies connected with consecration.

The legality of certain ceremonial practices connected with the consecration of the elements has been pronounced upon by the courts on numerous occasions in the past, and in particular by the Judicial Committee of the Privy Council during the period of the so-called 'ritual prosecutions' in the nineteenth century¹. Among the practices which have been held to be unlawful are the mixing of the wine with water in and as part of the communion service²; a change of posture by the priest (for example by kneeling or prostrating himself) during the prayer of consecration³; the elevation of the elements after consecration⁴; and performance of the ceremony of ablution (cleansing of the vessels) as a distinct and integral part of the service still in progress⁵.

1 As to the authority accorded to such decisions at the present day, see PARA 958 ante.

2 *Read v Bishop of Lincoln* [1892] AC 644 at 658, PC; see also *Martin v Mackonochie* (1868) LR 2 A & E 116; on appeal, but not on this point, LR 2 PC 365. In the Opinions of Lambeth (31st July 1899) (see PARA 954 note 2 ante) the archbishops said that although our Lord had used the wine of the Passover, which was a mixed cup, there is no record of his having mixed it afresh for the purpose of his sacrament, nor is there any reason to believe that he did so; the mixing of the chalice as part of the ceremonial was therefore omitted, though nothing was said to prevent it being mixed beforehand.

3 It was held that such a change of posture would be a violation of the rubric immediately preceding the prayer of consecration, which must be interpreted as requiring the priest to remain standing throughout the reciting of that prayer: see *Martin v Mackonochie* (1868) LR 2 PC 365. As to what constitutes kneeling or prostration, see *Martin v Mackonochie* (1869) LR 3 PC 52; *Martin v Mackonochie* (1870) LR 3 PC 409 at 418.

4 See *Martin v Mackonochie* (1868) LR 2 A & E 116; *Martin v Mackonochie* (1869) LR 3 PC 52; *Martin v Mackonochie* (1870) LR 3 PC 409. See also Articles of Religion 28, which states that the sacrament was not by Christ's ordinance reserved, carried about, lifted up or worshipped.

5 *Read v Bishop of Lincoln* [1891] P 9; affd. [1892] AC 644, PC. The Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion requires that anything which remains of the consecrated elements be reverently consumed immediately after the blessing. If at this stage the minister cleanses the vessels of all such remains, without ceremony or prayers, before finally leaving the holy table, he does not contravene the rubric: *Read v Bishop of Lincoln* supra. As to the corresponding rubrics in Series 2 and Series 3 Holy Communion, see PARA 986 note 3 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/985. Reception of the sacrament.

985. Reception of the sacrament.

Every minister, whenever he celebrates the Holy Communion, must receive the sacrament himself¹, and then administer it to the other communicants, delivering it into their hands while they kneel². The sacrament must be administered to the people in both kinds, both bread and wine, unless necessity otherwise requires³.

1 Revised Canons Ecclesiastical, Canon B 12 para 2; Book of Common Prayer, rubric following the prayer of consecration in the Order for the Administration of the Lord's Supper or Holy Communion.

2 Book of Common Prayer, rubric following the prayer of consecration in the Order for the Administration of the Lord's Supper or Holy Communion. The so-called 'black rubric' at the end of that Order, introduced in the Second Prayer Book of Edward VI (1552) to secure the support of some reformers, omitted from subsequent prayer books, but reintroduced in modified form in 1662, emphasises that the act of kneeling does not imply that any adoration is intended or ought to be done either to the sacramental bread or wine or to any corporal presence of Christ's natural flesh and blood, and declares that the bread and wine remain in their natural substances and that Christ's natural body and blood are in Heaven.

3 Sacrament Act 1547, s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(2) HOLY COMMUNION/986. Reservation of the sacrament.

986. Reservation of the sacrament.

The practice known as reservation consists in setting apart a portion of the consecrated elements for subsequent administration to persons other than those present at the service in which consecration has taken place¹. Reservation has in the past been held to be illegal as contravening the rubric in the Book of Common Prayer of the Order for the Administration of the Lord's Supper or Holy Communion². More recently, however, in the light of liturgical developments³, courts have recognised that it may be practised blamelessly and rightly provided certain conditions are observed; thus where the bishop has sanctioned reservation in a particular church the diocesan chancellor may be justified in granting a faculty for an aumbry⁴.

1 The practice takes several distinct forms. It is sometimes customary to treat sick persons who are not in the church, but are living close by, as if they were part of the congregation, and at the time of the administration to the communicants generally to take the elements out of the church to them as well as to those who are actually present. It has been claimed that this is not reservation at all, because the administration goes on without interruption, and it cannot be said that what is sent in this way is part of what remains after the service is over. Another practice is, instead of consuming all that remains after the service is over. Another practice is, instead of consuming all that remains of the consecrated elements as the rubric directs, to keep a portion back and subsequently to administer this portion to people known to be sick. Again, the elements after consecration may be reserved, not only to be used for those who are known to be sick at the time, but to be used for any case of sudden emergency which may occasion a demand for the sacrament in the course of the week. In addition, reservation is sometimes used for the benefit of persons who for reasons other than incapacity (eg conditions of work) are unable to attend a service in church.

2 *Re Lapford (Devon) Parish Church* [1955] P 205 at 210, [1954] 3 All ER 484 at 487, CA, following *Sheppard v Bennett* (1870) LR 4 PC 350 at 414; *Bishop of Oxford v Henly* [1907] P 88; subsequent proceedings [1909] P 319; *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289 at 305. As to the rubric referred to, see PARA 984 note 5 ante.

3 If the Church Assembly's Prayer Book Measure of 1928 had been accepted by Parliament a prayer book would have been authorised which in a rubric to an alternative Order for the Communion of the Sick made provision for reservation in an aumbry set in the north or south wall of the sanctuary of the church or of any chapel thereof or, if need be, in the wall of some other part of the church approved by the bishop, provided it was not immediately behind or above a holy table.

Series 2 Holy Communion makes provision by rubric 40 for the consumption after administration or after the end of the service of what remains of the consecrated bread and wine 'which is not required for the purposes of communion'. It has been held that the effect of this wording is to make reservation lawful: *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057. Similar provision is made in Series 3 Holy Communion, rubric 36.

4 *Re Lapford (Devon) Parish Church* [1955] P 205, [1954] 3 All ER 484, CA. See also *Re St Mary Magdalene, Altofts* (1941), reported in [1958] P 172n; *Re St Mary, Tyne Dock* [1954] P 369, [1954] 2 All ER 339; *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441, [1958] 1 WLR 1183; *Re St Nicholas, Plumstead (Rector and Churchwardens)* [1961] 1 All ER 298, [1961] 1 WLR 916; *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057. As to the legality of aumbries and other receptacles for the reserved sacrament, regarded as ornaments, see PARA 965 ante.

UPDATE

986 Reservation of the sacrament

NOTE 4--*Re Lapford (Devon) Parish Church*, cited, *Rector and Churchwardens of Bishopwearmouth v Adey*, cited and *Re St Peter and St Paul, Leckhampton*, cited,

applied in *Re St Matthew's, Wimbledon* [1985] 3 All ER 670. See also *Re St Thomas, Pennywell* [1995] 2 WLR 154; *Re St John the Evangelist, Chopwell* [1995] 3 WLR 606.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(3) MORNING AND EVENING PRAYER AND THE LITANY/987. Obligation to read services.

(3) MORNING AND EVENING PRAYER AND THE LITANY

987. Obligation to read services.

In every parish church¹ Morning and Evening Prayer must be said or sung distinctly, reverently and in an audible voice each Sunday, on other principal feast days², and on Ash Wednesday and Good Friday³. The diocesan bishop may, however, if satisfied that there is good reason to do so, authorise the minister of any parish church or parish centre of worship⁴ within his diocese to dispense with the reading of either or both those services on any such day, but before authorising the minister to dispense with the reading of either service on Sunday for a period of more than three months the bishop must consult with the parochial church council or with two council members nominated for the purpose by the council⁵. The bishop's powers under this provision are not to be used so as to cause any church to cease altogether to be used for public worship⁶. On all other days the minister of the parish, together with all other ministers licensed to serve in the parish, being at home and not otherwise reasonably hindered, must resort to the church morning and evening and, warning being given to the people by the tolling of a bell, say or sing the Common Prayers⁷ and on the appointed days⁸ the Litany⁹.

In every cathedral church the Common Prayer must be said or sung distinctly, reverently and in an audible voice every morning and evening, and the Litany on the appointed days, the officiating ministers and others of the clergy present in choir being duly habited¹⁰.

The diocesan bishop may direct what services are to be held or are not required to be held in any church in the diocese which is not a parish church or in any building or part of a building in the diocese which is licensed¹¹ for public worship but is not designated as a parish centre of worship¹².

1 See PARA 943 note 3 ante.

2 As to feast days, see PARA 950 ante.

3 Revised Canons Ecclesiastical, Canon B11 para 1 (substituted by Amending Canon No. 3). The Book of Common Prayer exhibits the intention that the services shall be used daily throughout the year: rubric preceding Order for Morning Prayer. The Act of Uniformity 1662, to which the Book of Common Prayer was annexed, provided that the services were to be read on every Lord's Day and on all other days and occasions therein appointed, and at the times therein prescribed, by all ministers or curates in every place of public worship of the Church of England: s 1 (repealed). The strictness of these requirements has, however, been modified in certain respects both in law and practice. Thus where, under a trust deed, the income of a fund was payable to an incumbent for conducting services in strict and literal accordance with the Book of Common Prayer, Sir John Romilly declined to hold that this required daily services: *Re Hartshill Endowment* (1861) 30 Beav 130.

4 ie designated as such under the Pastoral Measure 1968, s 29 (2): see PARA 539 ante.

5 Revised Canons Ecclesiastical, Canon B11 para 2 (substituted by Amending Canon No. 3); Canon B11A para 2 (added by Amending Canon No. 3). To constitute consultation a full and sufficient opportunity must be given to the council or its nominees to ask questions and submit opinions: *Re Union of Benefices of Whippingham and East Cowes, St James, Derham v Church Comrs for England* [1954] AC 245, [1954] 2 All ER 22, PC. See also PARA 970 note 14 ante, 1110 note 15 post.

6 Revised Canons Ecclesiastical, Canon B11 para 2.

7 In spite of the divergent wording of *ibid* Canon B10 and Canon B11, the 'Common Prayers' seem to refer to Morning and Evening Prayer. See Watson, *Clergyman's Law* (4th Edn) 310, where the terms are clearly used synonymously.

8 The Litany is to be said or sung after the third collect at Morning Prayer on Sundays, Wednesdays and Fridays, and at other times when commanded by the Ordinary: Book of Common Prayer, rubric preceding the Litany and rubric following the third collect at Morning Prayer.

9 Revised Canons Ecclesiastical, Canon B11 para 3. See also the Book of Common Prayer, rubric following the Preface 'Concerning the Service of the Church', which provides that all priests and deacons are to say Morning and Evening Prayer daily either privately or openly unless prevented by sickness or some other urgent cause, and see Canon C26 para 1, and PARA 678 ante.

10 Revised Canons Ecclesiastical, Canon B10.

11 Is licensed under the Pastoral Measure 1968, s 29: see PARA 539 ante.

12 Revised Canons Ecclesiastical, Canon B11A para 1 (added by Amending Canon No. 3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(3) MORNING AND EVENING PRAYER AND THE LITANY/988. Forms of service.

988. Forms of service.

The forms of service authorised for use at Morning and Evening Prayer are (1) the forms contained in the Book of Common Prayer, (2) a prescribed shortened form of service¹, and (3) alternative forms approved² by the General Synod³. The minister may, however, make and use minor variations in the authorised forms of service⁴, and in certain universities colleges may use special forms of service⁵.

1 See PARA 939 ante.

2 See under the Revised Canons Ecclesiastical, Canon B2 (substituted by Amending Canon No. 3): see PARA 937 ante.

3 Ibid Canon B1 para 1. See also PARAS 943-949 ante.

4 See ibid Canon B5, and PARA 941 ante.

5 In the case of any college subsisting on 16th June 1871 in any of the Universities of Oxford, Cambridge or Durham the visitor of the college may, at the request of its governing body, authorise the use of an abridgment or adaptation of Morning and Evening Prayer in the college chapel instead of the order set out in the Book of Common Prayer: Universities Tests Act 1871, s 6; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(3) MORNING AND EVENING PRAYER AND THE LITANY/989. Lay persons authorised to officiate.

989. Lay persons authorised to officiate.

Readers¹ and such other lay persons as may be authorised by the diocesan bishop may, at the invitation of the minister of the parish or, where the cure is vacant or the minister is incapacitated, at the invitation of the churchwardens, say or sing Morning or Evening Prayer, save for the absolution²; and in case of need, where no clerk in holy orders, reader or lay person so authorised is available, the minister or, failing him, the churchwardens must arrange for some suitable lay person to do so³. It seems that the reading of lessons by any lay person whom the minister considers suitable, though not authorised by any specific provision, is not to be regarded as unlawful⁴. There is no provision for the preaching of sermons by lay persons other than deaconesses and readers⁵.

1 As to readers, see PARA 762 et seq ante.

2 If no priest is present the lay person reads, in place of the absolution, the collect for the twentyfirst Sunday after Trinity: Book of Common Prayer, Order for Morning Prayer and Order for Evening Prayer, rubric following the general confession; Prayer Book (Further Provisions) Measure 1968, s 1 (2) (repealed); Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 4.

3 Revised Canons Ecclesiastical, Canon B11 para 4; Canon E4 para 2b; Book of Common Prayer, rubric headed 'The Order for Morning and Evening Prayer'; Prayer Book (Further Provisions) Measure 1968, s 1 (1) (repealed); Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 4. Deaconesses (as to whom see PARA 759 et seq ante) may be so authorised: Canon D1 para 3 (a) (added by Canon promulgated 20th February 1973).

4 Although the Revised Canons Ecclesiastical, Canon B12 para 4, permits a lay person to read the epistle and Gospel at Holy Communion nothing in the canons specifically permits a lay person to read the lessons at Morning and Evening Prayer, but the practice is of long standing. The Prayer Book (Further Provisions) Measure 1968, s 1 (5), provided that nothing in the Book of Common Prayer was to be taken as preventing the reading of any lesson by a lay person, but this provision has been repealed and not replaced: Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2. The rubrics in the Book of Common Prayer do not say who is to read the lessons, but require the minister to announce them at Morning Prayer.

UPDATE

989 Lay persons authorised to officiate

NOTE 5--See PARAS 759, 763, 946.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/990. Administration of the sacrament.

(4) BAPTISM

990. Administration of the sacrament.

Baptism is the sacrament by which a person is admitted into the Church of Christ¹. Its essential parts are the use of water and the invocation of the Trinity². It is because it is a sacrament that it ought properly to be administered by persons in priests' orders³. The duties of a deacon, however, include the baptising of infants in the absence of the priest⁴, and the bishop may authorise a deaconess to baptise in the absence of the minister⁵. Baptism by a dissenting minister or by any lay person in the name of the Trinity is good and effectual⁶. Provision is made in the rubrics for administering the sacrament by immersion in water, but the affusion or sprinkling of water is sufficient and usual⁷. It should from time to time be administered upon Sundays or other holy days at or immediately after public worship, so that a large number of people may witness the reception of the baptised person into the church and be reminded of their own profession in baptism, but children may, if necessary, be baptised on any other day⁸. The act of baptism is immediately followed by the signing of the Cross on the baptised person's forehead⁹. The Book of Common Prayer provides a brief form of private baptism which can be used of necessity when a child has to be baptised at home or in hospital¹⁰. The ministration of private baptism should, if the child lives, be followed in due course by a service in church at which the child is publicly received and signed with the sign of the Cross; if, however, the validity of the former baptism is not verified, the child is conditionally rebaptised¹¹.

1 Articles of Religion 25, 27; Gib Cod 359-372; Ayl Par 102-106. It is clearly intended that public baptism of infants in accordance with the office provided for this purpose in the Book of Common Prayer should be the normal practice, the other baptismal offices (private baptism of children and baptism of persons of riper years) being regarded as supplementary. See Articles of Religion 27, which states that the baptism of young children is in any wise to be retained in the Church, as most agreeable with the institution of Christ. Alternative forms of service for infant baptism (Series 1 and Series 2) are available.

2 Book of Common Prayer, rubric towards the end of the Ministration of Private Baptism of Children.

3 Ayl Par 104.

4 Book of Common Prayer, Form and Manner of Making of Deacons, 'It appertaineth to the office of a Deacon...'.

5 Revised Canons Ecclesiastical, Canon D1 para 4 (b) (added by Canon promulgated 20th February 1973). The General Synod may by canon extend this power to readers and other lay persons: Deaconesses and Lay Ministry Measure 1972, s 1 (1) (b): see PARAS 763, 766 ante.

6 Ayl Par 104; *Kemp v Wickes* (1809) 3 Phillim 264; *Escott v Mastin* (1842) 4 Moo PCC 104; *Nurse v Henslowe* (1844) 3 Notes of Cases 272; *Titchmarsh v Chapman* (1844) 3 Notes of Cases 370; *Cope v Barber* (1872) LR 7 CP 393 at 402, per Willes J.

7 Book of Common Prayer, rubrics in the Ministration of Publick Baptism of Infants and of Baptism to Such as are of Riper Years; Ayl Par 103. Public baptism is to be administered at the font: see the introductory rubrics to those offices in the Book of Common Prayer. As to the font, see PARA 994 post.

8 Revised Canons Ecclesiastical, Canon B21. Due notice, normally of at least a week, is to be given before a child is brought for baptism: Canons B 22 para 1.

9 Book of Common Prayer, Ministration of Publick Baptism of Infants, of Private Baptism of Children and of Baptism to Such as are of Riper Years. This sign is no part of the substance of the sacrament, but is for the remembrance of the Cross: see Revised Canons Ecclesiastical, Canon B 25.

10 For the minister's duty to baptise a child in danger of death, see *ibid* Canon B22 para 6, and PARA 993 post. The minister must warn the people that they should not have their children baptised privately in their houses without grave cause and necessity: Canon B22 para 9. As to notifying the minister of the parish where the parents live, where that is a different parish, see Canon B22 para 7, and PARA 996 post.

11 Book of Common Prayer, Ministration of Private Baptism of Children; Revised Canons Ecclesiastical, Canon B22 para 8 (amended by Amending Canon No. 3).

UPDATE

990 Administration of the sacrament

TEXT AND NOTE 8--For 'from time to time ... at or immediately after', read 'normally be administered on Sundays at': Canon B21, amended by Amending Canon No 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/991. Baptism of persons of riper years.

991. Baptism of persons of riper years.

The Book of Common Prayer provides a separate office for the baptism of such as are of riper years and able to answer for themselves¹. It is the minister's duty to see that the candidate is properly instructed in the principles of the Christian religion and to exhort him to prepare himself with prayers and fasting to receive the sacrament with repentance and faith²; and to give notice of it, at least a week before the baptism, to the diocesan bishop or whomsoever he appoints for the purpose³. At the baptism the candidate is to have sponsors in lieu of godparents⁴. Confirmation is expected to follow the baptism as soon as conveniently possible⁵.

1 There are corresponding modern alternative forms of service for adult baptism.

2 Revised Canons Ecclesiastical, Canon B24 para 1; Book of Common Prayer, Ministration of Baptism to Such as are of Riper Years.

3 Revised Canons Ecclesiastical, Canon B24 para 2; Book of Common Prayer, introductory rubric to the Ministration of Baptism to Such as are of Riper Years.

4 Book of Common Prayer, introductory rubric to the Ministration of Baptism to Such as are of Riper Years. As to sponsors, see PARA 992 post.

5 Revised Canons Ecclesiastical, Canon B24 para 3; Book of Common Prayer, rubric at the end of the Ministration of Baptism to Such as are of Riper Years.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/992. Godparents and sponsors.

992. Godparents and sponsors.

For every child to be baptised there must, unless he is of sufficient age to answer for himself, be not fewer than three godparents, of whom at least two must be of the same sex as the child and of whom at least one must be of the opposite sex, although when three cannot conveniently be had, one godfather and one godmother will suffice¹. Parents may be godparents for their own children provided that the child has at least one other godparent¹.

The godparents are to be persons who will faithfully fulfil their responsibilities both by their care for the children committed to their charge and by the example of their own godly living². The minister must instruct the infant's parents or guardians that the same responsibilities rest on them as are required of the godparents³. At the ministration of baptism the godparents are required to make the appropriate answers on behalf of the child⁴. When a person who is of riper years and able to answer for himself is to be baptised⁵, he must choose three, or at least two, persons to be his sponsors; their functions are to present him at the font and afterwards put him in mind of his Christian profession and duties⁶. No person may be admitted to be a godparent or sponsor who has not been baptised and confirmed, although the minister may dispense with the requirement of confirmation in any case in which in his judgment need so requires⁷.

1 Revised Canons Ecclesiastical, Canon B23 para 1; Book of Common Prayer, introductory rubric to the Ministration of Publick Baptism of Infants.

2 Revised Canons Ecclesiastical, Canon B23 para 2.

3 Ibid Canon B22 para 3.

4 Book of Common Prayer, rubrics in the Ministration of Publick Baptism of Infants.

5 See PARA 991 ante.

6 Revised Canons Ecclesiastical, Canon B23 para 3; Book of Common Prayer, introductory rubric to the Ministration of Baptism to Such as are of Riper Years.

7 Revised Canons Ecclesiastical, Canon B23 para 4; Book of Common Prayer, introductory rubrics to the Ministration of Publick Baptism of Infants and of Baptism to Such as are of Riper Years.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/993. Minister's duty to baptise.

993. Minister's duty to baptise.

A minister must not refuse or, save for the purpose of preparing or instructing the parents or guardians or godparents, delay to baptise any infant within his cure who is brought to the church to be baptised, provided that due notice has been given¹ and the provisions relating to godparents² are observed³. If the minister refuses or unduly delays to baptise any such infant the parents or guardians may apply to the diocesan bishop who must, after consultation with the minister, give such directions as he thinks fit⁴. A minister who is informed of the weakness or danger of death of any infant within his cure and is therefore desired to go to baptise him must not either refuse or delay to do so⁵.

1 See PARA 990 note 8 ante.

2 See PARA 992 ante. The minister could, it seems, lawfully object to the proposed godparents on the grounds, inter alia, that they did not satisfy the requirements of the canons set out in PARA 992 text to note 2 ante.

3 Revised Canons Ecclesiastical, Canon B22 para 4; Book of Common Prayer, introductory rubric to the Ministration of Publick Baptism of Infants.

4 Revised Canons Ecclesiastical, Canon B22 para 2; Book of Common Prayer, introductory rubric to the Ministration of the Publick Baptism of Infants. As to disciplinary proceedings for refusal to baptise, see PARA 1357 post.

5 Revised Canons Ecclesiastical, Canon B22 para 6. See further PARA 990 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/994. Font.

994. Font.

In every church and chapel where baptism is to be administered there must be provided a decent font with a cover to keep it clean¹. It must stand as near to the principal entrance as is convenient, unless there is a custom to the contrary or the Ordinary otherwise directs, and must be set in as spacious and well-ordered surroundings as possible². The font bowl must be used for the water at the administration of baptism and for no other purpose³.

1 Revised Canons Ecclesiastical, Canon F1 para 1. As to the parochial church council's duty to provide and pay for the font, see Canon F14.

2 Ibid Canon F1 para 2.

3 Ibid Canon F1 para 3.

UPDATE

994 Font

TEXT AND NOTES--As to the provision of an additional font for adult baptism by immersion, see *Re St Barnabas, Kensington* [1990] 1 All ER 169.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/995. Register of baptisms.

995. Register of baptisms.

A register of public and private baptisms must be kept by the minister of every parish and by the minister of any chapelry where the ceremonies of baptism have been usually and may according to law be performed¹.

The prescribed particulars of every baptism² must be entered in the register book by the minister as soon as possible after its solemnisation, and in no case later than seven days thereafter unless he is unavoidably prevented from so doing³.

1 Parochial Registers Act 1812, s 1; Births and Deaths Registration Act 1836, s 1. The provisions of the Parochial Registers Act 1812 apply also so far as circumstances permit to cathedrals, collegiate churches and chapels of colleges or hospitals: s 20. On a church becoming a guild church its baptismal registers are delivered to the guild church vicar and are deemed to be the register books of the guild church; in other respects the law relating to baptismal registers applies to guild churches: City of London (Guild Churches) Act 1952, s 23. As to guild churches, see PARA 597 et seq ante. Every minister must observe the law relating to the registration of baptisms: Revised Canons Ecclesiastical, Canon B39 para 1. The parochial church council must provide baptismal register books in every parish church and chapel where baptism is to be administered (Canon F11 para 1), and these books must be provided, maintained and kept in accordance with the Acts and Measures relating to them and rules and regulations made thereunder (Canon F11 para 2).

2 Ie the date of the baptism, the child's Christian names, the parents' Christian names and surname, abode and quality, trade or occupation, and the name of the person performing the ceremony: Parochial Registers Act 1812, Sch. (A). Further particulars must be given in the case of adoption or legitimation: see the Adoption Act 1958, s 25; Baptismal Register Measure 1961, s 1; and PARA 1112 note 2 post. As to the annotation made on a change of Christian name at confirmation, see PARA 1000 note 1 post.

3 Parochial Registers Act 1812, s 3.

UPDATE

995 Register of baptisms

TEXT AND NOTE 1--1812 Act consolidated. See now Parochial Registers and Records Measure 1978 ss 1, 2.

NOTE 2--Adoption Act 1958 s 25 repealed: Children Act 1975 Sch 4.

TEXT AND NOTE 3--Seven day limit no longer applies. Entries must be made as soon as possible: Parochial Registers and Records Measure 1978 s 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/996. Baptism elsewhere than in the parish church.

996. Baptism elsewhere than in the parish church.

When the ceremony of baptism is performed elsewhere than in the parish church or a chapel having its own register¹, and by a person who is not the minister or curate of the parish or chapelry concerned, the minister who performs the ceremony must, on the same or the next day, transmit a prescribed certificate of the baptism to the minister of that parish or his curate, who must make an entry of the baptism in the register, noting that the entry is made according to the certificate².

If the baptism is solemnised in an extra-parochial place where there is no church or chapel the officiating minister may within one month thereafter deliver to the minister of such adjoining parish as the Ordinary directs a memorandum of the baptism signed by a parent of the child and containing the prescribed particulars, and the memorandum must be entered by the minister to whom it is delivered in the register of his parish and is to form part of that register³.

A minister who intends to baptise any infant whose parents are residing outside the boundaries of his cure, unless the names of those persons or of one of them is on the church electoral roll of the same, must not proceed to the baptism without having sought the good will of the minister of the parish in which the parents reside⁴; and a minister baptising a child in a hospital or nursing home when the parents do not reside in his cure and their names are not on the electoral roll of the same must send their names and address to the minister of the parish in which they reside⁵.

1 As to the registers, see PARA 995 ante.

2 Parochial Registers Act 1812, s 4, Sch. (D). See also PARA 1112 note 2 post.

3 Ibid s 10.

4 Revised Canons Ecclesiastical, Canon B22 para 5.

5 Ibid Canon B22 para 7.

UPDATE

996 Baptism elsewhere than in the parish church

TEXT AND NOTES--1812 Act consolidated by the Parochial Registers and Records Measure 1978. See *ibid* s 2; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 2. When the ceremony of baptism is performed in an institution not having its own register in respect of which a clerk in Holy Orders is for the time being licensed under the Extra-Parochial Ministry Measure 1967 s 2 to perform any offices or services, the prescribed certificate must be sent to the incumbent or priest in charge of the parish in which the institution is: 1978 Measure s 2(3) (as substituted).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/997. No fees to be demanded.

997. No fees to be demanded.

By the general ecclesiastical law baptism, being a sacrament, was required to be administered free of charge in the absence of a special local custom to the contrary¹. Now, by express enactment, no fee or reward may be demanded by any minister, clerk in orders, parish clerk, vestry clerk, warden or other person for the administration or registration of baptism².

1 Ayl Par 106; *Burdeaux v Lancaster* (1698), 1 Salk 332; *Bishop of St David's v Lucy* (1699) 1 Ld Raym 447 at 450, per Holt CJ; *Andrews v Cawthorne* (1745) Willes 536 at 539n.

2 Baptismal Fees Abolition Act 1872, s 1. The taking or demanding of an illegal fee is an ecclesiastical offence: *Burgoyne v Free* (1829) 2 Hag Ecc 456 at 464-466. As to fees for certificates of baptism, see PARA 1115 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(4) BAPTISM/998. Teaching the young.

998. Teaching the young.

Every minister must take care that the children and young people within his cure are instructed in the doctrine, sacraments and discipline of Christ as set forth in the Bible, the Book of Common Prayer and especially in the Catechism, and to this end he or some godly and competent persons appointed by him must on Sundays or if need be at other convenient times diligently instruct and teach the children accordingly¹. Parents and guardians must take care that their children receive this instruction².

1 Revised Canons Ecclesiastical, Canon B26 para 1. The Catechism is contained in the Book of Common Prayer immediately before the Order of Confirmation. A Revised Catechism was approved by the convocations in 1961.

2 Ibid Canon B26 para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(5) CONFIRMATION/999. Administration of confirmation.

(5) CONFIRMATION

999. Administration of confirmation.

Confirmation is the laying on of hands by the bishop¹ upon persons who are baptised and instructed in the Christian faith and are come to years of discretion². The godparents of baptised infants are to take care that they are brought to the bishop to be confirmed as soon as they can say the Apostles' Creed, the Lord's Prayer and the ten commandments, and are further instructed in the Church Catechism³. Persons baptised when of riper years should be confirmed by the bishop as soon as conveniently may be after their baptism⁴. A minister having a cure of souls must diligently seek out children and others whom he thinks meet to be confirmed, and instruct them in the Christian faith and life as set forth in the Bible, the Book of Common Prayer and the Catechism⁵. He must satisfy himself that the candidates have been validly baptised⁶; in the case of doubt a candidate is to be conditionally baptised⁷. The minister presenting a candidate for confirmation must record and enter the confirmation, with any change of name⁸, in the register book of confirmations⁹ which must be provided in every church and chapel¹⁰.

1 He by the diocesan bishop himself or by some other bishop lawfully deputed in his stead: Revised Canons Ecclesiastical, Canon B27 para 1. It is the bishop's canonical duty to minister the rite of confirmation throughout his diocese as often and in as many places as may be convenient: Canon B27 para 1; Canon C18 para 6.

2 Book of Common Prayer, Order of Confirmation; Articles of Religion 25; Revised Canons Ecclesiastical, Canon B27 paras 1, 3; Gib Cod 375-379.

3 Book of Common Prayer, exhortation at the end of the Ministration of Publick Baptism of Infants and rubric following the Catechism, which also provides that each child is to have a godfather or godmother as a witness of his confirmation.

4 Book of Common Prayer, rubric following the Ministration of Baptism to such as are of Riper Years.

5 Revised Canons Ecclesiastical, Canon B27 para 2 (amended by Amending Canon No. 3). He must only present for confirmation those who have come to years of discretion, can say the Creed, the Lord's Prayer and the ten commandments and can render an account of their faith according to the Catechism: Canon B27 para 3. As to the Catechism, see PARA 998 ante.

6 Ibid Canon B27 para 4. He must ascertain the date and place of the baptisms and before or at the time of confirmation give the bishop the candidates' names, ages and dates of baptism: Canon B27 para 4.

7 Ibid Canon B27 para 5 (amended by Amending Canon No. 3); see also the Book of Common Prayer, at the end of the Ministration of Private Baptism of Children.

8 See PARA 1000 post.

9 Revised Canons Ecclesiastical, Canon B39 para 2.

10 Ibid Canon F11 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(5) CONFIRMATION/1000. Change of Christian name at confirmation.

1000. Change of Christian name at confirmation.

The bishop may at confirmation for good reason add to or alter the Christian name of a person who is confirmed¹ by confirming him under the new name, which is then deemed to be his lawful Christian name².

¹ Co Litt 3a; Watson, *Clergyman's Law* (4th Edn) 484; *Re Parrott, Cox v Parrott* [1946] Ch 183, [1946] 1 All ER 321. When this is desired, the bishop, in his prayer at the laying on of hands, mentions the person by the new or altered name, and at the conclusion of the rite signs a certificate of his having confirmed the person by that name, the effect of which is afterwards noted in the register of the person's baptism. It is also noted in the register of confirmations: see PARA 999 ante. As to change of name generally, see PERSONAL PROPERTY.

² Revised Canons Ecclesiastical, Canon B27 para 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(5) CONFIRMATION/1001. Reception into the Church of England.

1001. Reception into the Church of England.

Any person desiring to be received into the Church of England who has not been baptised or the validity of whose baptism can be held in question must be instructed and baptised or conditionally baptised¹, and this constitutes his reception into the Church². If he has been baptised but not episcopally confirmed and he desires to be formally admitted into the Church he must, after appropriate instruction, be received by the rite of confirmation³. If he has been episcopally confirmed with unction or the laying on of hands he must be instructed and, with the bishop's permission, received into the Church according to the form of reception approved by the General Synod or with other appropriate prayers, and if he is a priest he must be received only by the diocesan bishop or by that bishop's commissary⁴.

1 As to conditional baptism, see the Book of Common Prayer, at the end of the Ministration of Private Baptism of Children.

2 Revised Canons Ecclesiastical, Canon B28 para 1.

3 Ibid Canon B28 para 2. If he is not yet ready for confirmation, he must be received by the parish priest with appropriate prayers: Canon B28 para 2.

4 Ibid Canon B28 para 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(6) HOLY MATRIMONY

(6) HOLY MATRIMONY

UPDATE

1002-1040 Holy matrimony

Material relating to these paragraphs has been revised and published under the title MATRIMONIAL AND CIVIL PARTNERSHIP LAW vols 72, 73 (2009).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(7) BURIAL OF THE DEAD/1041. Burial in consecrated ground.

(7) BURIAL OF THE DEAD

1041. Burial in consecrated ground.

Save in the excepted cases mentioned below, where a person is buried in consecrated ground¹ the office for the burial of the dead according to the rites of the Church of England² is to be said by a minister in holy orders³. The exceptions fall into two categories: (1) cases excluded by the rubric in the Book of Common Prayer⁴, namely where a person has died unbaptised⁵ or excommunicate⁶ or has laid violent hands upon himself⁷; (2) cases in which any relative, friend or legal representative having the charge of or being responsible for the burial of the deceased person gives the prescribed written notice that it is intended that the burial shall take place without the performance of the burial service according to the rites of the Church of England⁸. In a case in which the burial office according to the rites of the Church of England may not lawfully be used⁹, and in any other case at the request of the relative, friend or legal representative having the charge of or being responsible for the burial, the minister is to use such service as may be prescribed or approved by the Ordinary¹⁰, or, where appropriate, any form of service available for the burial of suicides and approved by the General Synod¹¹.

Except in the above-mentioned cases, in which the rubric forbids the use of the burial office according to the rites of the Church of England, a minister may not refuse to bury according to those rites the corpse or ashes¹² of any person deceased within his cure or of any parishioner whether deceased within his cure or elsewhere that is brought to a church or burial ground or cemetery under his control in which the burial may lawfully be effected, due notice being given¹³.

A minister must, as soon as possible after a burial, register it in the prescribed manner¹⁴.

¹ As to rights of burial in churchyards and other consecrated ground, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1059 et seq.

² See the Book of Common Prayer, Order for the Burial of the Dead. Other forms of service may be authorised under the Revised Canons Ecclesiastical, Canon B 2 (substituted by Amending Canon No. 3): see PARA 937 ante. See eg Series 1 Burial Services and Series 3 Funeral Services. The change of name reflects the increasing number of cremations.

³ *Johnson v Friend and Ballard* (1860) 6 Jur NS 280; *Wood v Headingley-cum-Burley Burial Board* [1892] 1 QB 713 at 729, per Lord Coleridge CJ. In all matters pertaining to the burial of the dead every minister must observe the law in relation to it and the provisions of the Revised Canons Ecclesiastical, Canon B38 para 1.

⁴ See the Book of Common Prayer, rubric before the Order for the Burial of the Dead; Revised Canons Ecclesiastical, Canon B38 para 2.

⁵ A person who has been baptised with water in the name of the Trinity by a dissenting minister or by a lay person is not within this exception: *Kemp v Wickes* (1809) 3 Phillim 264; *Escott v Mastin* (1842) 4 Moo PCC 104; *Nurse v Henslowe* (1844) 3 Notes of Cases 272; *Titchmarsh v Chapman* (1844) 3 Notes of Cases 370.

⁶ Ie where he has been declared excommunicate for some grievous and notorious crime and no man can testify to his repentance: see Revised Canons Ecclesiastical, Canon B38 para 2. See also *Kemp v Wickes* (1809) 3 Phillim 264 at 271, 272: see PARA 1384 post.

⁷ Ie has put an end to his own life being, at the time, of years of discretion and in his senses: 4 Bl Com (14th Edn) 189; *Clift v Schwabe* (1846) 3 CB 437 at 472-476, per Pollock CB; *Dufaur v Professional Life Assurance Co* (1858) 25 Beav 599 at 602.

8 Burial Laws Amendment Act 1880, s 1, Sch. A. In such cases the burial may take place at the option of the person so having the charge of or being responsible for the same, either without any religious service or with such Christian and orderly religious service at the grave as he thinks fit, and any one or more persons invited or authorised by him so to do may conduct the service or take part in any religious act at it: s 6; see CREMATION AND BURIAL vol 10 (Reissue) PARA 1081 et seq.

9 lie in any of the cases excluded by the rubric in the Book of Common Prayer.

10 Burial Laws Amendment Act 1880, s 13; Prayer Book (Further Provisions) Measure 1968, s 5; Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 1 para 2; Revised Canons Ecclesiastical, Canon B38 para 2. A burial service so prescribed or approved by the Ordinary must be neither contrary to nor indicative of any departure from the doctrines of the Church of England in any essential matter: Canon B38 para 2 (amended by Amending Canon No. 3).

11 If a form of service available for the burial of suicides is approved by the General Synod under *ibid* Canon B2 (substituted by Amending Canon No. 3) (see PARA 937 ante), that service is to be used where applicable instead of the aforesaid service prescribed or approved by the Ordinary, unless the person having charge or being responsible for the burial otherwise requests: Canon B38 para 2 proviso (amended by Amending Canon No. 3).

12 As to cremation, see PARA 1043 post.

13 Revised Canons Ecclesiastical, Canon B38 para 2. As to due notice, see *Titchmarsh v Chapman* (1844) 3 Notes of Cases 370 at 412, 416. If any doubt arises whether a deceased person may be buried according to the rites of the Church of England, the minister must refer the matter to the bishop and obey his order and direction: Revised Canons Ecclesiastical, Canon B38 para 6. A body must not be disposed of until a registrar's certificate or coroner's order has been issued: see CREMATION AND BURIAL vol 10 (Reissue) PARA 929. As to performance of a funeral service before, at or after cremation, see PARA 1043 post.

14 See the Parochial Registers Act 1812, ss 1-4. See further CREMATION AND BURIAL vol 10 (Reissue) PARA 1109 et seq. In every parish church and chapel a churchyard or burial ground of which is used for burials there must be provided a register book of burials, which must be maintained and kept in accordance with the statutes and Measures relating to it and the rules and regulations made under them: Revised Canons Ecclesiastical, Canon F11 paras 1, 2. As to the fees for burial, see PARA 1198 post.

UPDATE

1041 Burial in consecrated ground

TEXT--A person who would otherwise have no right of burial in the churchyard or other burial ground of a parish has a right of burial there if at his death his name was on the church electoral roll of the parish: Church of England (Miscellaneous Provisions) Measure 1976 s 6(1). No person not having a right of burial in that place may be buried there without the consent of the minister (defined in *ibid* s 6(3)), but in deciding whether to give consent the minister must have regard to any general guidance given by the parochial church council with respect to the matter; *ibid* s 6(2). Burial includes disposal of cremated remains: 1976 Measure s 6(2); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 12.

Section 6(2) does not provide for a review by a consistory court of an incumbent's refusal to give consent for burial: *Re St Nicholas's, Baddesley Ensor* [1983] Fam 1, [1982] 2 All ER 351.

The minister of a parish may perform a funeral service in any crematorium or cemetery situated in another parish without the consent of the minister of that parish if (i) the deceased person died in that parish; or (ii) the deceased person was resident in that parish immediately before his death; or (iii) the name of the deceased person was on the church electoral roll of that parish immediately before his death: Church of England (Miscellaneous Provisions) Measure 1992 s 2(1), (2). As to the powers of chaplains at institutions to perform funeral services, see PARA 731.

The minister of a parish situated wholly or partly in an area which is chargeable with the expenses of a cemetery or for the use of which a crematorium or cemetery has

been designated by the bishop of the diocese must, with respect to persons who are his own parishioners or who die in his parish or whose names are entered on the church electoral roll of his parish, where he is requested to do so, be under the same obligation to perform or arrange the performance of funeral services in the crematorium or cemetery as he has to perform or arrange the performance of funeral services in any churchyard of his parish: 1992 Measure s 2(4).

'Minister', in relation to a parish, means (i) the incumbent; (ii) where the benefice to which the parish belongs is vacant (and no suspension period applies), the rural dean; (iii) where a suspension period applies to the benefice to which the parish belongs, the priest-in-charge (if any); and (iv) where a special cure of souls in respect of the parish has been assigned to a vicar in a team ministry by a scheme under the Pastoral Measure 1983 or by his licence from the bishop, that vicar: 1992 Measure s 2(6).

NOTE 14--1812 Act consolidated with amendments, see now Parochial Registers and Records Measure 1978 s 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(7) BURIAL OF THE DEAD/1042. Burial in unconsecrated ground.

1042. Burial in unconsecrated ground.

The relative, friend or legal representative having the charge of or being responsible for the burial of a deceased person who had a right of interment in any unconsecrated ground provided under an Act relating to burial is entitled, if he thinks fit, to have the burial performed in it according to the rites of the Church of England by any minister in holy orders of the Church of England who is willing to perform it, and no minister in holy orders is liable to any censure or penalty for using the burial office of the Church of England in any unconsecrated burial ground or cemetery or part of it, or in any building on it, in any case in which, if it had been consecrated, he might have lawfully used that office¹. When a body is to be buried according to the rites of the Church of England in any unconsecrated ground, the officiating minister, on coming to the grave, must first bless it².

1 Burial Laws Amendment Act 1880, s 12; Local Authorities Cemeteries Order 1974, S.I. 1974 No. 628, Sch. 3. A minister cannot be compelled to perform any part of the burial service on unconsecrated ground: *Rugg v Kingsmill* (1868) 5 Moo PCCNS 79 at 89, 90. As to the duty to register the burial, see PARA 1041 ante.

2 Revised Canons Ecclesiastical, Canon B38 para 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(7) BURIAL OF THE DEAD/1043. Cremation.

1043. Cremation.

Cremation¹ of a dead body is lawful in connection with Christian burial². When a body is to be cremated, the burial service may precede, accompany or follow the cremation, and may be held either in the church or at the crematorium³. While an incumbent is not under any obligation to perform a funeral service within the grounds of any burial authority, in the event of his refusal any clerk in holy orders, not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the person having charge of the cremation or interment of the cremated remains, perform such a service within such grounds⁴. Save for good and sufficient reason, the ashes of a cremated body should be interred or deposited, by a minister, in consecrated ground⁵.

1 As to cremation, see generally CREMATION AND BURIAL vol 10 (Reissue) PARA 951 et seq.

2 Revised Canons Ecclesiastical, Canon B 38 para 3.

3 Ibid Canon B 38 para 4a.

4 Ibid Canon B 38 para 4a proviso.

5 Ibid Canon B 38 para 4b.

UPDATE

1043 Cremation

TEXT AND NOTES--A person who has a right of burial in the churchyard or other burial ground of a parish has a right of burial therein of his cremated remains, but if the churchyard or burial ground has been closed by Order in Council, the burial must be authorised by a faculty or be in an area set aside by a faculty for the burial of cremated remains generally: Church of England (Miscellaneous Provisions) Measure 1992 s 3(1). The bishop of a diocese may consecrate land in the diocese for the sole purpose of burying cremated remains: ibid s 3(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(7) BURIAL OF THE DEAD/1044. Prayers for the dead.

1044. Prayers for the dead.

The practice of praying for the dead is of much earlier date than the doctrine of purgatory¹. Prayers for the dead do not fall under the same condemnation as the Roman doctrine of purgatory², and unless they necessarily involve that doctrine are not illegal³. The use of prayers for the dead has become more general⁴, as also have inscriptions on memorial tablets, windows and tombstones containing words of supplication for peace and light for the departed⁵.

1 *Breeks v Woolfrey* (1838) 1 Curt 880.

2 Cf. Articles of Religion 22.

3 *Breeks v Woolfrey* (1838) 1 Curt 880; *Re Parish of South Creak* [1959] 1 All ER 197, [1959] 1 WLR 427; *Re St Mary the Virgin, Ilmington* [1962] P 147, [1962] 1 All ER 560.

4 This is especially so since the publication of the revised prayer book of 1928, which, though rejected by the House of Commons, had received the approval of both convocations, and which contained (eg in the alternative order for Holy Communion and in the burial office) prayers for the departed.

5 Most of the reported decisions on this subject have been given in faculty proceedings, and the courts, in exercising their discretion to grant or withhold a faculty, have often been influenced by other considerations besides that of strict legality: see PARA 1310 post. Notices inviting prayers for the dead are in themselves (ie apart from any erroneous teaching) not illegal: *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1927] P 289. See also CHARITIES vol 8 (2010) PARAS 63-64.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(8) OTHER OCCASIONAL OFFICES AND MINISTRATIONS/1045. Churching of women.

(8) OTHER OCCASIONAL OFFICES AND MINISTRATIONS

1045. Churching of women.

The Book of Common Prayer provides a service entitled the Thanksgiving of Women after Childbirth, commonly called the Churching of Women¹. The rubrics direct that at the usual time after her delivery the woman is to come into the church decently apparelled² and there kneel down in some convenient place determined by custom and or direction of the Ordinary; it is declared to be convenient that she should receive the Holy Communion, if there be a celebration of it; and she is enjoined to offer the accustomed offerings³.

1 This service has largely (but not, it seems, entirely) fallen into disuse. The rubrics indicate that it is to be conducted by a priest, but the bishop may authorise a deaconess to conduct it: Revised Canons Ecclesiastical, Canon D1 para 4 (b) (substituted by Canon promulgated 20th February 1973).

2 In *Shipden v Redman Chancellor of Norwich* (1622) Palm 296, a diocesan order that a woman should come in a white veil to be churched was held to be enforceable as being in accordance with ancient ecclesiastical custom.

3 See *Naylor v Scott* (1729) 2 Ld Raym 1559. A custom that a fee shall be paid at the usual time of churching, whether the woman is actually churched or not, is void: *Naylor v Scott* supra. The offering is voluntary in cases where the standard table of fees prescribed by the Church Commissioners under the Ecclesiastical Fees Measure 1962, s 2, is applicable; cf. para 1198 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(8) OTHER OCCASIONAL OFFICES AND MINISTRATIONS/1046. Ministry to the sick.

1046. Ministry to the sick.

The minister, upon being informed that any person in the parish is sick or in danger of death, must resort to him as soon as possible to exhort, instruct and comfort him in such manner as he shall think most needful and convenient¹. A form of service for the purpose is provided in the Book of Common Prayer². A minister knowing that any person who is sick or in danger of death or so impotent that he cannot go to church is desirous of receiving the Holy Communion, must visit him as soon as may be, and unless there be any grave reason to the contrary, must minister that sacrament to him at such place and time as may be convenient³. If any such person so desires, the priest may lay hands upon him and may anoint him with oil on the forehead with the sign of the Cross, using an authorised form of service⁴.

The Book of Common Prayer contains no provision for exorcism⁵. The Archbishop of Canterbury has indicated that exorcism should be performed only by an experienced person, authorised by the diocesan bishop, in collaboration with medical treatment and in the context of prayer and sacrament, and should be followed by continuing pastoral care⁶.

1 Revised Canons Ecclesiastical, Canon B37 para 1. The minister is required to use his best endeavours to ensure that he be speedily informed when any person is sick or in danger of death in the parish: Canon B37 para 1.

2 Book of Common Prayer, Order for the Visitation of the Sick.

3 Revised Canons Ecclesiastical, Canon B37 para 2. See also the provision contained in the Book of Common Prayer for Communion of the Sick, including rubrics which require the sick person to give timely notice to the minister, signifying how many there are to communicate with him (who must be three or at least two, except that, on special request, the minister may communicate with him alone in the time of plague, sweat or other contagious disease, when no parishioners or neighbours may be got to communicate with him for fear of infection). As to the use of the reserved sacrament for communion of the sick, see PARA 986 ante.

4 Revised Canons Ecclesiastical, Canon B37 para 3 (amended by Amending Canon No. 3). The form must be one authorised by Canon B 1 (substituted by Amending Canon No. 3) (see PARA 937 ante), and the minister must use pure olive oil consecrated by the diocesan bishop or otherwise by the minister himself in accordance with that form of service: Canon B37 para 3 (amended by Amending Canon No. 3).

5 Recognition was given to exorcism in the Canons Ecclesiastical (1603), 72 (repealed), where it was provided that ministers were not to attempt the practice of exorcism without first obtaining the licence and direction of the bishop of the diocese. No corresponding provision appears in the Revised Canons Ecclesiastical.

6 Statement to the General Synod, 30th June 1975.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(8) OTHER OCCASIONAL OFFICES AND MINISTRATIONS/1047. Ministry of absolution.

1047. Ministry of absolution.

The exercise by a priest of the ministry of absolution is recognised as lawful in the Church of England¹. In addition to the general confessions of the congregation and the absolutions pronounced by the priest in the service of the Church² at Morning and Evening Prayer and in the Holy Communion, provision is made for private confession and absolution in appropriate circumstances, for example where intending communicants or sick persons are troubled in conscience³. However, while the making of confessions in such cases is encouraged and opportunities should be given to those who wish to make them, there is no legal justification for imposing the duty of confession as a compulsory requirement⁴. Normally a priest must not exercise the ministry of absolution in any place without the permission of the minister having the cure of souls there unless he is by law authorised to exercise his ministry there without being subject to such control⁵; but a priest may exercise the ministry of absolution anywhere in respect of any person who is in danger of death or if there is some urgent or weighty cause⁶. The obligation of a priest to observe strict secrecy concerning what is communicated to him in the course of a private confession is enjoined by ecclesiastical authority⁷; but whether the courts would recognise such a communication as belonging to the category of privileged communications remains uncertain⁸.

1 Revised Canons Ecclesiastical, Canon B29. It is sometimes referred to as the sacrament of penance; but see Articles of Religion 25.

2 As to a baptised person's duty to examine himself by the rule of God's commandments, and to confess himself to God, acknowledging his sins and seeking forgiveness, especially in the general confessions, see the Revised Canons Ecclesiastical, Canon B29 para 1.

3 See *ibid* Canon B29 paras 2, 3; Book of Common Prayer, exhortation in the Order for the Administration of the Lord's Supper or Holy Communion, and Order for the Visitation of the Sick. As to the placing of confessional boxes, etc. in churches, see PARA 969 ante.

4 *Rector and Churchwardens of Capel St Mary, Suffolk v Packard* [1927] P 289.

5 Revised Canons Ecclesiastical, Canon B29 para 4.

6 *Ibid* Canon B29 para 4 proviso.

7 See Canons Ecclesiastical (1603) 113 proviso (which has been left unrepealed) (see PARA 308 note 1 ante), and the Canons of the Church of England (SPCK 1969), Introduction by the Archbishops of Canterbury and York. For a pre-Reformation canon to similar effect, see Lyndwood 334, 335.

8 As to privilege, see *R v Hay* (1860) 2 F & F 4; Badeley, *The Privilege of Religious Confessions* (1865); Best, *Principles of the Law of Evidence* (4th Edn); Phillimore, *Ecclesiastical Law* (2nd Edn) 543; Garth Moore, *An Introduction to English Canon Law* (1967) 95, 96; Winckworth, *The Seal of the Confessional and the Law of Evidence* (1952); and see CIVIL PROCEDURE vol 11 (2009) PARA 972.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(9) PROTECTION AGAINST DISTURBANCE/1048. Riotous or indecent behaviour.

(9) PROTECTION AGAINST DISTURBANCE

1048. Riotous or indecent behaviour.

Any person who is guilty of riotous, violent or indecent¹ behaviour in any cathedral, church or chapel of the Church of England or in any chapel of any religious denomination² or in any certified place of religious worship³, whether during the celebration of divine service or at any other time, or in any churchyard or burial ground⁴, or who molests, lets, disturbs, vexes or troubles, or by any other unlawful means disquiets or misuses any preacher duly authorised to preach therein or any clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite or office⁵, is liable on summary conviction to a fine of £20 or imprisonment without fine for any time not exceeding two months⁶. An appeal lies from conviction to the Crown Court⁷. Upon commission of such an offence the offender may immediately and forthwith be apprehended by any constable or churchwarden of the parish or place where the offence has been committed and taken before a justice of the peace to be dealt with according to law⁸.

1 What amounts to indecent behaviour depends on circumstances of time and place. An act done in a church during divine service may be highly indecent and improper although it would not be so at another time: *Worth v Terrington* (1845) 13 M & W 781 at 795, per Parke B. 'Indecent' does not here signify what tends to deprave or corrupt nor does it have any sexual connotation; it is used within the context of creating a disturbance in a sacred place: *Abrahams v Cavey* [1968] 1 QB 479, [1967] 3 All ER 179, DC. See also *Palmer v Roffey* (1824) 2 Add 141; *Girt v Fillingham* [1901] P 176; *Jones v Catterall* (1902) 18 TLR 367.

2 As to the meaning of 'denomination', see PARA 302 note 3 ante. See further PARAS 1386, 1387 post.

3 The one certified under the Places of Worship Registration Act 1855: see PARA 1410 post.

4 As to disorder in burial grounds, see also the Burial Laws Amendment Act 1880, ss 7, 8, and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1086-1087.

5 The Ecclesiastical Courts Jurisdiction Act 1860, s 2, draws a distinction between a person 'duly authorised to preach' in the church and 'a clergyman in holy orders ministering or celebrating any sacrament or any divine service, rite, or office' in any church. The express provision for the case of a preacher who is not strictly ministering or celebrating any sacrament or any divine service, rite or office shows that the legislature, in dealing with the case of a clergyman in holy orders, meant the latter words to apply to something in the course of being done which in its character could only then be done by such a clergyman: *Cope v Barber* (1872) LR 7 CP 393 at 401, per Willes J. 'Sacrament' here refers to celebration outside a church, and 'any divine service... in any cathedral, church or chapel' include all the services of the Church of England, including the celebration of the sacraments: *Matthews v King* [1934] 1 KB 505. The protection is given to the clergyman independently of any question of irregularities in the service: *Matthews v King* supra.

6 Ecclesiastical Courts Jurisdiction Act 1860, s 2; Criminal Justice Act 1967, s 92 (1), Sch. 3, Part I. The fact that the behaviour was in assertion of a bona fide claim of right is no defence: *Asher v Calcraft* (1887) 18 QBD 607; and see *Kensit v Dean and Chapter of St Paul's* [1905] 2 KB 249 at 257; *A-G v St Cross Hospital* (1854) 18 Beav 601. The offence can be committed by a clergyman who acts in a violent or indecent way in his own church or churchyard: *Vallancey v Fletcher* [1897] 1 QB 265. See also the Revised Canons Ecclesiastical, Canon F15 para 3, and PARA 554 ante.

7 Ecclesiastical Courts Jurisdiction Act 1860, s 4; Courts Act 1971, ss 8, 56 (2), Sch. 1, Sch. 9, Part I.

8 Ecclesiastical Courts Jurisdiction Act 1860, s 3. As to the powers and duties of churchwardens in such circumstances, see also PARA 554 ante. A person may, it seems, be removed from a church for disturbing the congregation at the time of divine service even though no part of a service is actually proceeding at the time: see *Williams v Glenister* (1824) 2 B & C 699, where it was held on the facts that the constable had no right to detain but that if the disturber had been found as a fact to have acted with the purpose of molesting the person

celebrating divine service the detention would have been justified under the Brawling Act 1553 (repealed) and the Toleration Act 1688, s 18 (repealed).

UPDATE

1048 Riotous or indecent behaviour

TEXT AND NOTE 6--For 'any time' read 'a term': Ecclesiastical Courts Jurisdiction Act 1860 s 2 (amended by the Courts Act 2003 Sch 8 para 37). Maximum fine now level 1 on the standard scale: Criminal Justice Act 1982 ss 38, 46. As to the standard scale, see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

NOTE 7--For 1971 Act s 8 see now Senior Courts Act 1981 s 45.

TEXT AND NOTE 8--Repealed so far as relates to a constable: Police and Criminal Evidence Act 1984 Sch 7 Pt I. As to arrest by a constable, see s 25; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 908 et seq. Reference to a justice of the peace is now to a magistrates' court: 1860 Act s 3 (amended by the Courts Act 2003 Sch 8 para 38).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(9) PROTECTION AGAINST DISTURBANCE/1049. Obstructing a minister.

1049. Obstructing a minister.

A person is guilty of an offence who (1) by threats or force obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister in or from celebrating divine service or otherwise officiating in any church, chapel, meeting house or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place; or (2) strikes or offers any violence to, or arrests upon any civil process or under the pretence of executing such process, any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in any of these rites or duties, or who to his knowledge is going to or returning from their performance¹.

¹ Offences against the Person Act 1861, s 36; Criminal Law Act 1967, s 1. The defendant is liable on conviction to imprisonment for a term not exceeding two years (Offences against the Person Act 1861, s 36; Criminal Justice Act 1948, s 1 (2)); he may also be fined or bound over, with or without sureties, to be of good behaviour (Criminal Law Act 1967, s 7 (3); Justices of the Peace Act 1968, s 1 (7)). The offence is triable in the Crown Court.

UPDATE

1049 Obstructing a minister

NOTE 1--Offence now triable either way under Magistrates' Courts Act 1980 s 17, Sch 1. As to penalties on summary conviction, see *ibid* s 32.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/6. CHURCH SERVICES/(9) PROTECTION AGAINST DISTURBANCE/1050. Offences at common law.

1050. Offences at common law.

It appears to be an offence at common law to disturb a priest of the established church in the performance of divine worship¹ or to strike any person in a church or churchyard².

1 *R v Parry* (1686) Trem PC 239.

2 *Wilson v Greaves* (1757) 1 Burr 240 at 243.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(1) TYPES AND CHARACTERISTICS OF ECCLESIASTICAL PROPERTY/1051.
Ecclesiastical property.

7. PROPERTY OF THE CHURCH OF ENGLAND

Demolition of buildings

References to the demolition of a building in the Pastoral Measure 1983, dealt with in the following paragraphs, include the demolition of part thereof: *ibid* s 87(5); Church of England (Miscellaneous Provisions) Measure 1995 s 11(d).

(1) TYPES AND CHARACTERISTICS OF ECCLESIASTICAL PROPERTY

1051. Ecclesiastical property.

The existence of property capable of recognition by a court generally presupposes the existence of a person recognised by the law and of some legal right vested in that person, either of a corporeal or of an incorporeal nature¹.

Where the relations existing between such a recognised person and such a legal right arise out of or have relations to a church (*ecclesia*) regarded as an organism distinct from the individual members composing it², the property is regarded as ecclesiastical property.

Accordingly, where property is appropriated for use only in connection with or for the benefit of a church, or is appropriated for use only by or for the benefit of officers or members of a church as such³, or is held for a spiritual purpose in connection with a church, or is owned by any person in the capacity of a representative of a church⁴, it is called ecclesiastical property⁵.

Generally speaking, all churches and chapels of the Church of England are exempt from rates⁶.

Church property formerly received special protection from the criminal law, but is now protected from theft and damage by the general provisions of the criminal law⁷.

1 Property may denote the thing to which a person stands in a certain relation, and also the relation in which the person stands to the thing: *Re Earnshaw-Wall* [1894] 3 Ch 156.

2 These distinctions are illustrated by *Rector and Churchwardens of St George's Hanover Square v Westminster Corpn* [1910] AC 225, HL; *revsg. sub nom. Westminster Corpn v Rector and Churchwardens of St George's, Hanover Square* [1909] 1 Ch 592, CA, and approving the dissentient judgment of Buckley LJ at 611.

3 Even though the benefit to the members of a church is of a temporal nature, the property is ecclesiastical property if they derive the benefit as members of the church: *Re Perry Almshouses, Re Ross's Charity* [1899] 1 Ch 21, CA.

4 Where land is owned by a person in his ecclesiastical capacity it is ecclesiastical property even if it need not necessarily be applied to an ecclesiastical purpose: *Rector and Churchwardens of St George's, Hanover Square v Westminster Corpn* [1910] AC 225, HL. Where, however, land bought with money representing part of the endowment of a rectory is conveyed to the rector, but not in his capacity as rector, it may cease to be ecclesiastical property: *Power v Banks* [1901] 2 Ch 487.

5 These characteristics of ecclesiastical property are based on those set out in the Local Government Act 1894, s 75 (2), by which 'ecclesiastical charity' includes a charity the endowment of which is held for some one or more of the following purposes: (1) for any spiritual purpose which is a legal purpose; (2) for the benefit of any spiritual person or ecclesiastical officer as such; (3) for use, if a building, as a church, chapel, mission-room or Sunday school, or otherwise by any particular church or denomination; (4) for the maintenance, repair or improvement of any such building, or for the maintenance of divine service in it; or (5) otherwise for the benefit

of any particular church or denomination, or of any of its members as such; provided that where any endowment of a charity other than a building held for any of these purposes is held in part only for some of these purposes, the charity so far as that endowment is concerned is to be an ecclesiastical charity within the meaning of that Act. This definition is applied by the Charities Act 1960, s 45 (1).

6 See the General Rate Act 1967, s 39. The official residence of a minister of religion receives partial relief from rates: see s 40.

7 See the Theft Act 1968, ss 1, 9; Criminal Damage Act 1971, s 1; and CRIMINAL LAW, EVIDENCE AND PROCEDURE. For this purpose property of a corporation sole is to be treated as belonging to the corporation sole notwithstanding a vacancy in the corporation: Theft Act 1968, s 5 (5); Criminal Damage Act 1971, s 10 (4). The property of an incumbent can therefore be laid in him notwithstanding a vacancy in the benefice.

UPDATE

1051 Ecclesiastical property

TEXT AND NOTES--Although the life interest in consecrated land and the whole of the legal fee simple in unconsecrated curtilage is in the incumbent, while the chattels belong at law to the churchwardens, the incumbent and the churchwardens are not beneficial owners but owners on behalf of parish; in reality both the consecrated and the unconsecrated land and chattels are parish property held for the benefit of the parish church and its congregation: *Re Consecrated land in Camomile Street* [1990] 3 All ER 229 per Newsom Ch.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 5--Charities Act 1960 s 45(1) now Charities Act 1993 s 96(1): see CHARITIES vol 8 (2010) PARA 264. Definition of 'ecclesiastical charity' amended: Charities Act 2006 s 75, Sch 8 para 9.

NOTE 6--1967 Act repealed: Local Government Finance Act 1988 ss 117(1), 149, Sch 13 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(1) TYPES AND CHARACTERISTICS OF ECCLESIASTICAL PROPERTY/1052.
Recognition of representative owners of parochial property.

1052. Recognition of representative owners of parochial property.

The recognition by the law and the legal characteristics of the persons who own property on behalf of the Church of England, and the ecclesiastical characteristics of the property which is owned for use by or for the benefit of officers or members of that church as such, have to a great extent arisen out of and now depend on the parochial system¹.

Before the division into parishes the bishop² or abbot was recognised in his representative capacity as the owner of the property of the whole *parochia* or of the monastery, and as the division into parishes³ proceeded a need arose for some person who might be similarly recognised in a representative capacity as the owner of the property allotted to each parish. Accordingly the law recognised that not only was the bishop in his spiritual capacity a corporation having perpetual succession, but that in respect of every parish a person might be recognised as the *parochianus* or person who should, in his representative capacity, be a corporation capable of preserving the original endowment for his successors in perpetuity⁴.

The determination of who is the person thus recognised as person in each particular parish depends on the question whether the benefice has been appropriated or impropriated, and on the nature of the appropriation or impropriation⁵. In the case of an impropriate rectory, that portion of the endowment which is owned by the lay rector for other than spiritual purposes is not ecclesiastical property, but where a benefice is appropriate the endowment as a whole, and where impropriate that part of the endowment which forms the vicar's emoluments or is otherwise owned for spiritual purposes, is ecclesiastical property. Where impropriate, if the owner entitled in fee simple to the rectory or tithes is willing to restore the property representing the tithes, glebe and other rectorial rights, the vicarage may be converted into a rectory⁶, and the tithes and glebe restored will thereupon be ecclesiastical property again. The ecclesiastical property owned in connection with a parish thus usually includes (1) the church and churchyard⁷; (2) the property representing the tithes, rectorial or vicarial, as the case may be; and (3) the parsonage house and glebe⁸.

1 As to the development of the parochial system, see PARAS 534, et seq, ante.

2 In the early days, in effect, no new church with the rights of christening and burying could be erected without the bishop's sanction for, although by the common law any subject might, so far as the mere building went, erect a church or chapel (Gib Cod 188), yet by the ordinances of the Church no church or chapel could be erected without the leave of the bishop of the diocese, it could not be consecrated as a church until a competent endowment was made for the priest and until consecration the building could not be used without the bishop's licence for the celebration of the sacraments: see 1 Burn's Ecclesiastical Law (4th Edn) 322.

3 A parish is that circuit of ground which is committed to the charge of one person or vicar or other minister having cure of souls therein: 1 B 1 Com (14th Edn) 110.

4 As to the word 'parson', see PARA 689 note 3 ante.

5 As to the nature and tenure of benefices, see PARA 689 ante.

6 Church Building Act 1822, s 13; New Parishes Measure 1943, s 32, Schedule (repealed); Statute Law (Repeals) Act 1974, s 1, Schedule, Part VII. The Church Commissioners may direct the conversion to be made either for a parish or a separate division of a parish where a proportion of the tithe and glebe satisfactory to them is restored: Church Building Act 1822, s 13 (as amended); Church Commissioners Measure 1947, s 18 (2).

7 The freehold of the church and churchyard is in the rector, where there is one, whether spiritual or lay: *Jones v Ellis* (1828) 2 Y & J 265 at 273.

8 Every bishop within his diocese must procure, so far as he is able, that a full note and terrier of all land, goods and other possessions of the parochial churches and chapels be compiled and kept by the minister and churchwardens in accordance with instructions and forms prescribed by the General Synod (Revised Canons Ecclesiastical, Canon F17 para 1 (amended by Amending Canon No. 1)), and every archdeacon must at least once in three years, in person or by the rural dean, satisfy himself that this has been done (Canon F17 para 2). A combined form of terrier and inventory may be obtained from the Church House Bookshop.

UPDATE

1052 Recognition of representative owners of parochial property

TEXT AND NOTES--As to ownership of ecclesiastical property, see *Re Consecrated land in Camomile Street* [199] 3 All ER 229 (see PARA 1051).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(1) TYPES AND CHARACTERISTICS OF ECCLESIASTICAL PROPERTY/1053. Property held for other than parochial purposes.

1053. Property held for other than parochial purposes.

In addition to property vested in persons in a representative capacity for spiritual or other purposes in connection with a parish, various descriptions of property are held by corporations or other legally constituted bodies as trustees for the benefit of the Church of England as a whole, or of particular officers or territorial divisions of it other than a parish¹. For example large estates and funds are held by the Church Commissioners², the Central Board of Finance³ and other bodies on behalf of the Church of England, but not necessarily in connection with a particular parish, although the trusts affecting much of such property admit of the allocation of the property or of the income from it for parochial purposes.

1 See PARAS 517, 518 ante (diocesan boards of finance) PARA 626 et seq ante (cathedrals), and PARA 1233 post (Church Commissioners).

2 See PARA 1234 post.

3 In *Re Barnes, Simpson v Barnes* (1922) [1930] 2 Ch 80n, Romer J left undecided the question whether the Central Board of Finance has the right to be paid bequests 'for the Church of England'.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(i) Introduction/1054.
Foundation and consecration of churches.

(2) CONSECRATED CHURCHES AND CHURCHYARDS

(i) Introduction

1054. Foundation and consecration of churches.

A building intended for use as a church or chapel may be erected by anyone¹ and may, with the bishop's consent, be used for divine service and the administration of sacraments but, subject to certain exceptions, the law does not take notice of such a building as a church or chapel of the Church of England until it has been consecrated by the bishop². The bishop's right to give or withhold his sanction to the foundation of a church, and to consecrate or to refuse to consecrate a building erected for that purpose, is absolute³.

Where the building is consecrated as a church the church so founded⁴ includes the cure of souls and the rights attached within the district assigned to it. It continues to exist in the eye of the law as a church, and the body corporate which has been endowed in respect of it remains in possession of the endowment, even though the material building is destroyed⁵.

Before consecrating a church the bishop is bound to ascertain that a competent endowment, including a manse and glebe, has been provided, and accordingly it is necessary before commencing to build a church to obtain the bishop's approval of the site, plans and endowment so as to secure that, when the church is finished, the bishop will be willing to consecrate it⁶.

Where a parish has no parish church the bishop must make provision for public worship according to the rites and ceremonies of the Church of England by licensing one or more buildings or parts of buildings for such worship⁷.

1 3 Co Inst 201.

2 By a constitution of Otho it was provided that all cathedral, conventual and parochial churches then built and their walls perfected were to be consecrated within two years, and that it was to be so done within the same time in all churches afterwards to be built under penalty that they should be interdicted from the solemnities of the mass until consecrated, unless they be excused for some reasonable cause (Lyndwood, *Constitutiones Legatine* D. Othonis, etc. 5), and on the principle that *omnia praesumuntur rite esse acta* it may therefore fairly be inferred that all ancient parochial churches have been duly consecrated. The fact that the sacraments have not been administered in a chapel thus affords strong ground for thinking that it is a chapel of ease and not a parochial chapelry: *Carr v Mostyn* (1850) 5 Exch 69.

3 See *Sedgwick v Bourne* [1920] 2 KB 267 at 275. Even if the incumbent of the existing church of the parish objects to the consecration of another building the bishop may overrule his objection: *Bishop of Winchester v Rugg* (1868) LR 2 A & E 247; *affd. sub nom. Rugg v Bishop of Winchester* LR 2 PC 223.

4 A chapel erected for the private use of a lord of a manor and his employees and tenants, even though consecrated and used on exceptional occasions for baptisms and other offices excepting burial, is not necessarily to be regarded as a parochial chapel: *Nevill v Studdy* (1906) 94 LT 391.

5 It was formerly thought that the material building would, if it were polluted or absolutely destroyed, require reconsecration (*Battiscombe v Eve* (1863) 7 LT 679; *Turner v Rector of Hanwell* (1842) 1 Notes of Cases 368), but these cases have been doubted, and it has been said that even the material building will not require reconsecration if it is rebuilt on the same foundations; or at least this will be so when the offices of the church have continuously been performed and the rebuilding has been done under a faculty so that what remained of the building has remained subject to the jurisdiction of the Ordinary (*Parker v Leach* (1866) LR 1 PC 312).

6 See PARA 1052 note 2 ante.

7 Pastoral Measure 1968, s 29 (1). This may occur after a declaration of redundancy in respect of the parish church: see s 28; and PARA 1129 et seq post. The bishop may designate the building so licensed as the parish centre of worship: s 29 (2).

UPDATE

1054 Foundation and consecration of churches

TEXT AND NOTE 7--1968 Measure s 29, as amended, now Pastoral Measure 1983 s 29; see PARA 539.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(i) Introduction/1055. Modern foundations.

1055. Modern foundations.

After the end of the thirteenth century, the realm having become divided into parishes and extra-parochial places, the foundation of churches according to the ancient manner ceased and churches and chapels were thenceforth acquired and consecrated either (1) for the purpose of replacing existing churches¹ or of making better provision for the cure of souls in existing parishes or extra-parochial places; or (2) in connection with some alteration in the boundaries of existing parishes or extra-parochial places for the purpose of providing for the cure of souls in some newly formed parish or district.

The mode of forming new parishes today has already been considered² and it is here intended only to deal with the acquisition and consecration of churches and churchyards and the provision of endowments where such formation has taken place, and with certain general provisions now applicable to all ecclesiastical districts in relation to these matters³.

1 Where a church had been consecrated and used for twelve years for divine worship in place of an ancient chapel which had fallen into decay it was held that, although christenings and burials were still performed in the chapel, it had de facto ceased to be a church or chapel of the parish or place within the meaning of the Parish Notices Act 1837, s 2: *Ormerod v Chadwick* (1847) 16 LJMC 143.

2 See PARA 537 et seq ante. As to the provision of a parish church by a pastoral scheme in connection with the creation of a new parish by union or otherwise, see the Pastoral Measure 1968, s 27, and PARA 538 ante.

3 'Ecclesiastical district' is used here in the sense in which it is defined in the New Parishes Measure 1943, s 29 (1), ie any parish whether ancient or new, and any district formed under the Church Building Acts 1818 to 1884, or the New Parishes Acts 1843 to 1884, or the New Parishes Measure 1943, and any other ecclesiastical parish or district the minister of which has a separate cure of souls. The Church Building Acts and the New Parishes Acts have been mainly repealed by the New Parishes Measure 1943, Schedule (repealed).

UPDATE

1055 Modern foundations

NOTE 1--1837 Act repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(i) Introduction/1056. Closure and disposal of churches.

1056. Closure and disposal of churches.

There were formerly several statutory provisions, now repealed, whereby a church could be closed, demolished or appropriated to other uses and the site disposed of¹. The only procedure now available for closing a consecrated church² of the Church of England on the ground that it is no longer required for use as a church is under the provisions of the Pastoral Measure 1968³. Moreover, no consecrated church or part of such church or its site or part of its site may be sold, let or otherwise disposed of except in pursuance of the powers contained in that Measure⁴. These restrictions on the closure or disposal of churches do not prevent the grant of a faculty authorising a suitable use of part of a church or the grant of a faculty in respect of any land annexed or belonging to a church⁵; nor do they affect any powers under any Act of Parliament⁶.

There are provisions for the acquisition by the Secretary of State of places of public religious worship held by or in trust for a charity, not being subject to the provisions of the Pastoral Measure 1968, which are no longer required as places of public religious worship⁷.

1 See the Union of Benefices Measure 1923, s 19 (1), (2), substituted by the Union of Benefices (Disused Churches) Measure 1952, s 1; and see the Union of Benefices Measure 1923, ss 20-24; Union of Benefices (Amendment) Measure 1936, s 10; Union of Benefices (Disused Churches) Measure 1952, ss 2, 3. See also the Union of Benefices Act 1860, s 14, extended by the Union of Benefices Act 1898, s 1; New Parishes Measure 1943, s 22 (4) proviso; Reorganisation Areas Measure 1944, ss 20-24, 26, Sch. 1; Pastoral Reorganisation Measure 1949, s 4. These provisions are all repealed by the Pastoral Measure 1968, s 95, Sch. 9. As to transitional provisions, see s 94, Sch. 8. As to existing schemes providing for the closure, demolition or appropriation of any church, see Sch. 8 para 3, and PARA 858 ante. As to existing proceedings for the removal of human remains, see Sch. 8 para 11.

2 For the meaning of 'church', see *ibid* s 90 (1), and PARA 865 note 1 ante.

3 *Ibid* s 56 (1). The procedure is either by way of a declaration of redundancy under s 28 (see PARA 1119 post), or by way of a scheme under s 55 (see PARA 1133 post): s 56 (1). As to the extent of the Pastoral Measure 1968, see s 96 (2), and PARA 856 ante.

4 *Ibid* s 56 (2). The powers referred to are those under Part III (ss. 42-66 (redundant churches)) (see PARA 1119 et seq post) or under s 30 (see PARA 1074 note 5 post): s 50 (2).

5 *Ibid* s 56 (3) (a). As to faculties, see PARA 1306 et seq post.

6 *Ibid* s 56 (3) (b).

7 See the Redundant Churches and other Religious Buildings Act 1969, s 4, and PARA 1134 post.

UPDATE

1056 Closure and disposal of churches

NOTE 1--As to existing schemes and proceedings, see now Pastoral Measure 1983 Sch 8 (amended by the Statute Law (Repeals) Act 2004).

NOTE 2--Now 1983 Measure s 87(1).

TEXT AND NOTES 3-6--Now *ibid* s 56 (amended by the Pastoral (Amendment) Measure 2006 s 1); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7 (see PARA 1074).

TEXT AND NOTE 7--Now acquisition by the Secretary of State or the Historic Buildings and Monuments Commission for England: 1969 Act s 4; National Heritage Act 1983 s 33(3), Sch 4 para 13. See PARA 1134.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1057. Gifts for Churches Acts 1803 and 1811.

(ii) Acquisition of Land and Property

1057. Gifts for Churches Acts 1803 and 1811.

By virtue of the Gifts for Churches Act 1803 a person might, by deed enrolled or will executed not less than three months before his death, give land not exceeding five acres or goods and chattels not exceeding £500 for or towards a church or chapel of the Church of England, or a mansion house for the residence of the minister officiating in such church or chapel, or any outbuildings, churchyard or glebe for it, and that land, goods and chattels might be held without licence in mortmain¹. The principal sections of the Act which permitted these gifts have been repealed with the abolition of the law of mortmain². Certain provisions of the Gifts for Churches Acts relating to Crown land, manorial waste and corporations are, however, still unrepealed³.

1 See the Gifts for Churches Act 1803, ss 1-3 (repealed).

2 See the Charities Act 1960, s 48 (2), Sch. 7, Part II, and CHARITIES vol 8 (2010) PARAS 82-83.

3 See PARAS 1058-1060 post.

UPDATE

1057 Gifts for Churches Acts 1803 and 1811

TEXT AND NOTES--1803 Act repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1058. Crown land.

1058. Crown land.

Crown land and land of the Duchy of Lancaster may be granted to any person or persons, bodies politic or corporate, to an extent not exceeding 5 acres in any one grant, for or towards the erecting, rebuilding, repairing, purchasing or providing any church or chapel of the Church of England, or any mansion house for the residence of any minister officiating or to officiate in any such church or chapel, or any outbuildings, offices, churchyard or glebe for it, to be applied with the consent of the Ordinary in accordance with the purposes expressed in the grant¹.

¹ Gifts for Churches Act 1811, s 1; Charities Act 1960, s 48 (2), Sch. 7, Part II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1059. Manorial waste land.

1059. Manorial waste land.

Any person or body politic or corporate seised of or entitled to the entire and absolute fee simple of any manor may grant to the rector, vicar or other minister of any parish church and his successors, or to the curate or minister of any chapel and his successors, any parcel of land not exceeding five acres, being part of the waste of that manor and lying within the parish or extra-parochial district where the church or chapel is or is intended to be erected, for the purpose of erecting or enlarging any such church or chapel or for a churchyard or burying ground, or enlarging a churchyard or burying ground, for that parish or extra-parochial place or for a glebe for the rector, vicar, curate or other minister to erect a mansion house or other buildings on or make other conveniences for his residence, freed and discharged of and from all rights of common¹.

¹ Gifts for Churches Act 1811, s 2; Charities Act 1960, s 48 (2), Sch. 7, Part II (repealed). This does not authorise a grant overriding customary rights other than rights of common eg a customary right to use the land as part of a village green: *Forbes v Ecclesiastical Comrs for England* (1872) LR 15 Eq 51. The power of a lord of a manor under the enactment is restricted by the Commons Act 1899, s 22, Sch. 1: see COMMONS vol 13 (2009) PARA 476. For a form of conveyance, see Forms and Precedents.

UPDATE

1059 Manorial waste land

TEXT AND NOTE 1--Gifts for Churches Act 1811 s 2 repealed: Commons Act 2006 s 48(2) (a), Sch 6 Pt 3 (in force in relation to England: SI 2007/2584).

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1060. Grants by corporations.

Provision has also been made enabling a corporation aggregate or sole to grant, by way of gift or exchange, a plot of land not exceeding one acre for annexing to a church, chapel, house of residence or churchyard, or for employment as the site of a church, chapel or house of residence¹.

¹ Gifts for Churches Act 1803, s 4; Charities Act 1960, s 48 (2), Sch. 7, Part II (repealed).

UPDATE

1060 Grants by corporations

TEXT AND NOTE 1--1803 Act repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1061. Acquisition under the New Parishes Measure 1943.

1061. Acquisition under the New Parishes Measure 1943.

In relation to any ecclesiastical district¹ the Church Commissioners may acquire by way of gift, devise or purchase, inter alia: (1) a church or part of a church or any other building fit to be used as or to be converted into a church²; (2) any land³ as a site for a new church or for a church to be substituted for an existing church or for enlarging the site of an existing church⁴; (3) any building for use as a church hall or for use both as a church or other place of worship and as a church hall, or any land for the site of such a building⁵; (4) any building or land for or for an extension of a house of residence⁶ for an incumbent⁷ or other ecclesiastical person⁸; and (5) any land required for providing access to or improving the amenities of any such church or house of residence⁹. They may similarly acquire land to provide or extend churchyards and burial grounds¹⁰, and may also accept gifts or bequests of money to be laid out in the purchase of land to be held for any of the foregoing purposes¹¹. The conveyance must be in such form as may be prescribed by the commissioners¹².

These powers of acquisition also apply to church buildings which under a sharing agreement are to be owned or continue to be owned by the Church of England only, and to land required as sites for such buildings or for purposes connected with them¹³.

1 For the meaning of 'ecclesiastical district', see PARA 1055 note 3 ante.

2 New Parishes Measure 1943, s 13 (1) (a); Church Commissioners Measure 1947, s 18 (2); Charities Act 1960, s 48 (2), Sch. 7, Part II (repealed); Church Property (Miscellaneous Provisions) Measure 1960, s 5.

3 'Land' includes any hereditaments, corporeal or incorporeal, of any tenure: New Parishes Measure 1943, s 29 (1).

4 Ibid s 13 (1) (b).

5 Ibid s 13 (1) (bb); Church Property (Miscellaneous Provisions) Measure 1960, s 5.

6 'House of residence' includes its site and any land occupied or to be occupied with it as a garden or glebe: New Parishes Measure 1943, s 29 (1).

7 'Incumbent' includes any minister with cure of souls: ibid s 29 (1).

8 Ibid s 13 (1) (d).

9 Ibid s 13 (1) (e).

10 See ibid s 13 (1) (c), (e), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1003.

11 Ibid s 13 (2); Charities Act 1960, s 48 (2), Sch. 7, Part II (repealed).

12 New Parishes Measure 1943, s 13 (3). As to stamp duty, see PARA 1063 post.

13 Sharing of Church Buildings Measure 1970, s 2 (2). 'Sharing agreement' and 'church building' have the same meaning as in the Sharing of Church Buildings Act 1969, ss 1 (1), 12 (1) (see PARA 1186 post), and references to the ownership of church buildings are to be construed as under that Act: Sharing of Church Measure 1970, s 3. See further PARA 1186 et seq post.

UPDATE

1061 Acquisition under the New Parishes Measure 1943

TEXT AND NOTE 5--Head (3) now any building to be used as a place of worship (other than a church) or church hall or both as a church or other place of worship and as a church hall or any land for the site of a building to be so used or for enlarging the site of an existing building so used: 1943 Measure s 13(1)(bb); Church of England (Miscellaneous Provisions) Measure 1983 s 1(1); Church of England (Miscellaneous Provisions) Measure 1992 s 8(a)(i).

TEXT AND NOTE 9--Head (5) now any land required for providing access to or improving the amenities of any such church or other place of worship, church hall, or house of residence: 1943 Measure s 13(1)(e); 1983 Measure s 1(1); 1992 Measure s 8(a)(ii). See also head (6) any land required for providing vehicle parking space for use in connection with any such church or other place of worship, or church hall: 1943 Measure s 13(1)(f); 1992 Measure s 8(a)(iii).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1062. Grants to the Church Commissioners under the New Parishes Measure 1943.

1062. Grants to the Church Commissioners under the New Parishes Measure 1943.

Buildings or land may be granted to the Church Commissioners¹ for inter alia any of the purposes mentioned in the last paragraph by any corporation, lay, ecclesiastical or collegiate, and whether sole or aggregate², or by any trustees for charitable purposes³ even though the latter have no authority to convey charity land required for the purposes of the charity⁴. Provision is made for granting for the same purposes buildings or land belonging to Her Majesty in right of the Crown, the Duchy of Lancaster or the Duchy of Cornwall or belonging to a government department or held in trust for Her Majesty for the purposes of such a department⁵. Any such grant may be made by way of gift or for less than the full consideration⁶. Special provisions apply where the land to be acquired is waste of a manor or is subject to rights of common⁷ or to rents or other periodical charges⁸.

Where the diocesan board of finance⁹ or any other body constituted for the holding on trust of diocesan property holds any buildings or land for the general purposes of the board or for any ecclesiastical purposes of the Church of England the board or other body may, without the sanction of the Charity Commissioners or the court, grant the buildings or land to the Church Commissioners for the foregoing purposes, being purposes falling within the purposes for which the land is held prior to the grant¹⁰.

Where the grantor is the incumbent of a benefice in his capacity as such, if the purchase money exceeds £20 it must be paid to the Church Commissioners¹¹ and appropriated by them for the benefit of the benefice or, if it does not exceed £20, it may be paid to the incumbent for his own use and benefit¹¹. The commissioners may hold any property, real or personal, for the purposes above mentioned or as an endowment of any benefice¹².

Conveyances to the commissioners under these powers are not valid unless and until their assent is testified by the affixing of their seal¹³ and where such seal is required no instrument directed to be registered in a diocesan registry can be so registered unless and until the seal is so affixed¹⁴.

These powers of disposing of land and buildings to the Church Commissioners apply also to church buildings which under a sharing agreement are to be owned or continue to be owned by the Church of England only, and to land required as sites for such buildings or for purposes connected with them¹⁵. The powers also apply to church buildings which under a sharing agreement are to be jointly owned by the Church of England and any other church and to land required as sites for or otherwise in connection with such church buildings, save that the grant is made to the trustee or custodian trustee in whom the building or land is to be vested¹⁶.

1 See the Church Commissioners Measure 1947, ss 1, 2, 18 (2); Charities Act 1960, s 48 (2), Sch. 7, Part II.

2 New Parishes Measure 1943, s 14 (1) (a). For the distinctions between corporations sole and aggregate and ecclesiastical and lay, see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1103. The bishop of a diocese may delegate his power to make such a grant in case of illness or absence: Pastoral Measure 1968, s 85 (1), (2), (d); see PARA 473 ante.

3 New Parishes Measure 1943, s 14 (1) (b); Charities Act 1960, s 48 (1), Sch. 6. Except in the case of an exempt charity within the meaning of the Charities Act 1960 (see CHARITIES vol 8 (2010) PARA 315), trustees for charitable purposes may make such a grant only with the sanction of an order of the Charity Commissioners: New Parishes Measure 1943, s 14 (1) (b); Charities Act 1960, s 48 (1), Sch. 6. For the saving of the Charity Commissioners' rights, see the New Parishes Measure 1943, s 31; Charities Act 1960, s 48, Sch. 6; Education

Act 1973, s 1 (4), Sch. 2. See CHARITIES vol 8 (2010) PARA 395. As to grants for churchyards and burial grounds, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1004.

4 *A-G v Bishop of Manchester* (1867) LR 3 Eq 436.

5 New Parishes Measure 1943, s 14 (1) (c). The appropriate authority to make the grant is (1) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estates Commissioners or other government department having the management of the land, subject in either case to Treasury consent; (2) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the chancellor of the duchy; (3) in the case of land belonging to the Duchy of Cornwall, the Duke of Cornwall or the possessor for the time being of the duchy; (4) in the case of land belonging to or held in trust for the purposes of a government department, that department with the consent of the Treasury: s 14 (1) (c); Crown Estate Act 1956, s 1 (repealed); Crown Estate Act 1961, s 1. The Crown Estates Commissioners are relieved of their normal duty to obtain the best consideration in money or money's worth: s 4 (3).

6 New Parishes Measure 1943, s 14 (1). 'Full consideration' means the best consideration that could reasonably be expected to be obtained: s 29 (1).

7 See *ibid* s 15 (1), (2), and COMMONS vol 13 (2009) PARA 477.

8 *Ibid* s 15 (3). Where it appears to the Church Commissioners and the grantor that the retained land is of ample value to bear the rent or charge, the part granted may be conveyed free from the rent or charge: s 15 (3).

9 As to diocesan boards of finance, see PARAS 517, 518 ante.

10 Pastoral Measure 1968, s 76 (1).

11 New Parishes Measure 1943, s 14 (2); Church Commissioners Measure 1947, s 18 (2). It has been declared for the removal of doubt that an incumbent of a benefice may grant for these purposes any glebe land or glebe house or any part of the land held with the parsonage, but no such grant may be made without the consent of the parsonages board: Pastoral Measure 1968, s 76 (2); Repair of Benefice Buildings Measure 1972, ss 1 (1), 29.

12 New Parishes Measure 1943, s 14 (3); Charities Act 1960, s 48 (2), Sch. 7, Part II.

13 New Parishes Measure 1943, s 19 (1). On the affixing of the seal the conveyance has effect as from its date: s 19 (1). As to the form of conveyance, see PARA 1061 ante.

14 *Ibid* s 19 (2).

15 Sharing of Church Buildings Measure 1970, s 2 (2). As to the meaning of 'sharing agreement', and 'church building' and as to ownership, see PARA 1061 note 13 ante. As to sharing of church buildings, see PARA 1186 et seq post.

16 *Ibid* s 2 (3). As to vesting of shared buildings, see PARA 1188 post.

UPDATE

1062 Grants to the Church Commissioners under the New Parishes Measure 1943

TEXT AND NOTES 2-6--During a vacancy in a benefice, this power which would have been exercisable by the incumbent of the benefice had the benefice been full, is exercisable by the bishop: 1943 Measure s 14(1A); Church of England (Miscellaneous Provisions) Measure 1983 s 2(1).

TEXT AND NOTE 3--For 'Charities Act 1960' read 'Charities Act 1993': 1943 Measure s 31, amended by Charities Act 1993 Sch 6 para 3(4). 1943 Measure s 31 further amended: Charities Act 2006 Sch 8 paras 29, 31. The 1993 Act applies to any order under the 1943 Measure s 14(1)(b) as it applies to orders under the 1993 Act: 1943 Measure s 14(4), as inserted by the 1993 Act Sch 6 para 3(3). See now CHARITIES vol 8 (2010) PARA 549.

NOTE 3--1943 Measure s 14(1)(b) further amended: Charities Act 1993 Sch 6 para 3(2), Charities Act 2006 Sch 8 paras 29, 30. The Charities Act 1993 s 89 applies to any order under the 1943 Measure s 14(1)(b) as it applies to orders under the 1993 Act: 1943 Measure s 14(4), inserted by Charities Act 1993 Sch 6 para 3(3). See also CHARITIES vol 8 (2010) PARA 549. 1943 Measure s 31 further amended: Charities Act 1993 Sch 6 para 3(4).

NOTE 10--Now Pastoral Measure 1983 s 76(1).

TEXT AND NOTE 11--Replaced. Now where the grantor is the incumbent of a benefice in his capacity as such, or where during a vacancy in a benefice the grantor is the bishop, the purchase money must be paid to the Church Commissioners and appropriated by them for the benefit of the diocesan stipends fund: 1943 Measure s 14(2); Church of England (Miscellaneous Provisions) Measure 1983 s 2(2).

NOTE 11--1968 Measure s 76(2) now Pastoral Measure 1983 s 76(2).

TEXT AND NOTE 12--Reference to endowment repealed: Endowments and Glebe Measure 1976 Sch 8.

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1063. Exemption from stamp duty.

No deed of gift, grant, agreement or conveyance or other instrument made for any of the purposes mentioned in the two preceding paragraphs or for carrying out any powers conferred by the New Parishes Measure 1943 is liable to stamp duty¹.

¹ New Parishes Measure 1943, s 18, in effect re-enacting the Church Building Act 1822, s 28. This section also applies to any instrument made by virtue of the Sharing of Church Buildings Measure 1970, s 2 (3): see s 2 (3), and PARA 1062 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1064. Provision of church buildings in new housing areas.

1064. Provision of church buildings in new housing areas.

In addition to their powers under other enactments the Church Commissioners have power to make grants or loans out of their general fund¹ to such person or persons and on such terms and conditions as they think proper for or towards the provision of church buildings² in any area where they are of opinion that, having regard to recent housing development³, that area is not sufficiently provided with suitable church buildings of any description⁴. These powers are not exercisable except at the written request of the pastoral committee of the diocese made with the concurrence of the bishop⁵.

1 As to the commissioners' general fund, see PARA 1234 post. The payment is to be made on such terms and conditions as the commissioners may think proper (New Housing Areas (Church Buildings) Measure 1954, s 1 (3)), and if by way of a loan may be repayable by instalments or otherwise and either free of interest or with interest at such rate as the commissioners think proper: s 1 (4)). This additional power of the commissioners does not derogate from any other powers of theirs: s 1 (7).

2 The reference to the provision of church buildings is to be construed as a reference to all or any of the following, ie the acquisition of sites for church buildings, the erection of church buildings, the acquisition of church buildings or of any interest in them, the enlargement or improvement of church buildings and the conversion or adaptation of any building to make it suitable for a church building: *ibid* s 1 (5).

'Building' includes a structure of any kind, and 'church building' means any building used or to be used wholly or mainly for purposes connected with the Church of England: s 1 (6). As to shared buildings, see note 4 *infra*.

3 Ie the provision of new dwellings after 1st April 1945 on such a scale as, in the commissioners' opinion, to have 'resulted in a substantial increase since that day in the resident population of the area': *ibid* s 1 (6).

Where new dwellings were provided in an area in the period of three years ending 3rd September 1939 on a similar scale, and the commissioners are satisfied that the insufficiency of church buildings is attributable wholly or mainly to circumstances arising out of the 1939-45 war, they may treat that provision of new dwellings as constituting recent housing development: s 1 (6) proviso.

4 *Ibid* s 1 (1), (3). Grants or loans might be made eg to a diocesan board of finance, as to which see PARA 517 ante. The power to make grants or loans may be exercised in respect of any church buildings shared or to be shared by the Church of England under a sharing agreement, being buildings which under the agreement are or will be owned by the Church of England only, or jointly owned by that Church and any other Church: Sharing of Church Buildings Measure 1970, s 2 (1). See PARA 1061 note 13 ante, 1186 *et seq* post.

5 New Housing Areas (Church Buildings) Measure 1954, s 1 (2). The diocesan synod may designate a committee other than the pastoral committee to act for this purpose: s 1 (2) proviso; Synodical Government Measure 1969, s 4 (7).

UPDATE

1064 Provision of church buildings in new housing areas

TEXT AND NOTES--Where it appears to the Church Commissioners that, owing to social or economic changes other than recent housing development, any area is not sufficiently provided with suitable church buildings of any description, the Commissioners may, if it is expedient, make payments, whether by way of grant or loan, towards the provision in that area of one or more church buildings of the description in question: Church Commissioners (Assistance for Priority Areas) Measure 1988 s 2(1). The provisions of 1954 Measure s 1(2)-(7) apply in relation to powers exercisable by the Commissioners

under 1988 Measure s 2(1) as they apply in relation to powers exercisable under 1954 Measure: 1988 Measure s 2(2).

As to power of Church Commissioners to make payments by grant or loan from their general fund to the Church Urban Fund see PARA 371.

TEXT AND NOTE 3--'Recent housing development' now means the provision in any area, during the 25 years immediately preceding the date of the receipt by the Commissioners of a request under 1954 Measure s 1(2) with respect to that area, of new dwellings on such a scale as, in the opinion of the Commissioners, to have resulted in a substantial increase during that period of the resident population of the area: 1954 Measure s 1(6); 1988 Measure s 1(1). The proviso in the case of dwellings provided in the period of 3 years ending on 3 September 1939 has been abolished: 1988 Measure s 1(2).

NOTE 4--The power to make payments under 1988 Act s 2(1) is also exercisable in respect of shared church buildings to which 1970 Measure applies: 1970 Measure s 2(1); 1988 Measure s 2(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(ii) Acquisition of Land and Property/1065. Conveyances under the Places of Worship Sites Acts 1873 and 1882.

1065. Conveyances under the Places of Worship Sites Acts 1873 and 1882.

Any persons having the beneficial interest¹ in freehold land in fee simple or for an entailed interest or for life or lives and being in possession of it and any corporation, officers, justices of the peace, trustees or commissioners holding land for public or charitable purposes², may give, sell or exchange any number of sites³ not exceeding one acre each in fee simple or for a term of years for a church, chapel, meeting house or other place of worship⁴, or for the residence of a minister officiating in a place of worship within one mile of the site, or for a burial place⁵, but such a conveyance by a tenant for life or lives is invalid unless the person next entitled in remainder⁶ or, if he is under disability, his guardian⁷ or committee joins in or concurs⁸. There are provisions as to the payment and application of the purchase money or money received for equality of exchange⁹ and for the apportionment of rent to which the land is subject, and savings for encumbrances¹⁰.

Any such person may make similar grants for the purposes of the New Parishes Measure 1943¹¹ to the Church Commissioners or as the commissioners may direct and the commissioners may also act as trustees for the purpose of making and holding sites; all conveyances made under the enactment are deemed to be made under the New Parishes Measure 1943 and the land conveyed is to vest in conformity with the conveyance and that Measure¹².

If any part of the land so conveyed is used for any purpose other than as a site for such place of worship, residence or burial place, or if such place of worship or residence ceases for a year at a time to be used as such, it reverts to the land from which it was severed¹³. Conveyances for these purposes may be made in a statutory form¹⁴.

1 Trustees in whom is the legal estate need not be parties to the conveyance: Places of Worship Sites Act 1873, s 3.

2 See the Places of Worship Sites Amendment Act 1882, s 1. In the case of an ecclesiastical corporation sole below the dignity of a bishop the bishop's consent is required: s 1 proviso (a). In the case of a municipal corporation the Secretary of State's consent is required: s 1 proviso (b); Transfer of Functions (Places of Worship Sites) Order 1953, S.I. 1953 No. 734; Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. The Secretary of State's consent is also necessary in the case of parochial property: Places of Worship Sites Amendment Act 1882, s 1 proviso (c); Local Government Act 1929, s 137, Sch. 12, Part VIII (repealed); Ministry of Health Act 1919, s 3 (1) (a), (5), Sch. 1; Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 2) Order 1951, S.I. 1951 No. 1900; Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. In the case of property held on trust for charitable purposes the Charity Commissioners' consent is required: Places of Worship Sites Amendment Act 1882, s 1 proviso (d); Charities Act 1960, s 2 (1); Education Act 1973, s 1 (1) (g); see CHARITIES vol 8 (2010) PARA 395.

3 No part of a demesne or pleasure ground attached to a mansion house may be so conveyed: Places of Worship Sites Act 1873, s 1.

4 The Act is not confined to the purposes of the Church of England.

5 Places of Worship Sites Act 1873, s 1.

6 For the position when such person is unborn or unascertained, see the Places of Worship Sites Amendment Act 1882, s 2. For a form of conveyance with the concurrence of the remainderman, see Forms and Precedents.

7 The father of a minor, even though he is the tenant for life, may join in the conveyance so as to satisfy the proviso: *Re Marquis of Salisbury and Ecclesiastical Comrs* (1876) 2 ChD 29, CA.

8 Places of Worship Sites Act 1873, s 1 proviso; Mental Treatment Act 1930, s 20 (5); Mental Health Act 1959, s 149 (4). As to conveyances by guardians and committees, see also the Places of Worship Sites Act 1873, s 3; Mental Treatment Act 1930, s 20 (5); Mental Health Act 1959, s 149 (4). The provisions of the Places of Worship Sites Act 1873, ss 1, 3, do not apply to persons within the jurisdiction under the Mental Health Act 1959, Part VIII (ss. 100-121): see s 121, Sch. 5.

9 Places of Worship Sites Act 1873, s 2.

10 Ibid s 3, which applies for certain purposes the Lands Clauses Consolidation Act 1845, s 119.

11 The New Parishes Measure 1943 substantially repealed and replaced the Church Building Act 1818 and a number of Acts amending it.

12 Places of Worship Sites Act 1873, s 5; Interpretation Act 1889, s 38 (1); Interpretation Measure 1925, s 1; Church Commissioners Measure 1947, s 18 (2). For the provisions as to the acquisition and vesting of land contained in the New Parishes Measure 1943, see PARAS 1061, 1062 ante.

13 Places of Worship Sites Act 1873, s 1 proviso.

14 Ibid s 4; Charities Act 1960, s 48 (2), Sch. 7, Part II (repealed); see Forms and Precedents; and see *Imperial Tobacco Co (of Great Britain and Ireland) Ltd v Wilmott* [1964] 2 All ER 510, [1964] 1 WLR 902, where the question was whether a conveyance was made under the Places of Worship Sites Act 1873. For special provisions relating only to assurances of land for churchyards and burial grounds, see the Burial Ground Act 1816; Consecration of Churchyards Act 1867; Consecration of Churchyards Act 1868; and see CREMATION AND BURIAL vol 10 (Reissue) PARAS 1007, 1010, 1066-1067.

UPDATE

1065 Conveyances under the Places of Worship Sites Acts 1873 and 1882

NOTES 1, 8--1873 Act s 3 amended: Statute Law (Repeals) Act 2004.

NOTES 2, 14--Charities Act 1960 now Charities Act 1993; see CHARITIES.

NOTE 2--1882 Act s 1 proviso (d) amended: Charities Act 2006 s 75, Sch 8 para 6. Functions under the 1882 Act transferred to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. As to the National Assembly for Wales see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 42A et seq.

NOTE 8--1959 Act s 149(4) repealed; see now Mental Health Act 1983 s 148, Sch 5 paras 29, 30. 1959 Act Pt VIII s 121, Sch 5 now 1983 Act Pt VII s 113, Sch 3.

NOTE 12--Interpretation now governed by Interpretation Act 1978, which consolidates 1889 Act and 1925 Measure s 1.

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1066. Statutory provision for enlargement of leaseholds.

Where premises are held under a lease¹ for a life or lives or a term, as originally created, of not less than twenty-one years, and are held upon trust to be used as a church, chapel or other building used for a place of worship, or as a burial ground, Sunday or Sabbath school or caretaker's house used in connection with and held upon the same trusts as a place of worship², or are held upon trust to be used, in connection with a place of worship, as a minister's house, and the premises are being used in accordance with the terms of the trust, the trustees³, notwithstanding any agreement to the contrary⁴, may enlarge up to two acres⁵, of the leasehold into a fee simple, and for that purpose may acquire⁶ the freehold and intermediate reversions⁷. The person entitled to the freehold or intermediate reversion may require that minerals be excepted if proper provision is made for the support of the premises⁸. Upon acquisition the freehold is held upon the same trusts, and subject to the same covenants and obligations, other than the payment of rent, as the original leasehold⁹; but covenants to insure against fire and to reinstate the premises after fire, and other covenants to do any act beneficial to the demised premises alone, continue in force only where the consideration is a rentcharge, and so long as the rentcharge is payable¹⁰.

The foregoing provisions apply, with modifications, to the residence house of a benefice¹¹.

1 'Lease' includes an underlease and an agreement for a lease or underlease: Places of Worship (Enfranchisement) Act 1920, s 1 (2).

2 See *ibid* s 5; Leasehold Reform Act 1967, s 40 (1) (a); and see *Stradling v Higgins* [1932] 1 Ch 143.

3 'Trustees' means the persons in whom the leasehold premises are for the time being vested for the purposes of a place of worship or minister's house under any trust, whether express or implied, and includes their predecessors in title: Places of Worship (Enfranchisement) Act 1920, s 5; Leasehold Reform Act 1967, s 40 (1) (b).

4 However, an agreement against the enlargement of the leasehold into a freehold contained in a lease granted or made before 3rd December 1920 is not included: Places of Worship (Enfranchisement) Act 1920, s 1 (1). 3rd December 1920 was the date the Act received the royal assent.

5 See *ibid* s 1 (1) proviso (a).

6 The procedure for compulsory acquisition laid down in the Compulsory Purchase Act 1965, Part I (ss. 1-32), applies to the acquisition of reversionary interests, subject to modifications: see the Places of Worship (Enfranchisement) Act 1920, s 2; Leasehold Reform Act 1967, s 40 (4), (8).

7 Places of Worship (Enfranchisement) Act 1920, s 1; Leasehold Reform Act 1967, s 40 (1) (a). The power to acquire reversions does not apply where the premises are used as a place of worship in contravention of a covenant in the lease under which they are held or of a superior lease (Places of Worship (Enfranchisement) Act 1920, s 1 (1) proviso (b)); nor where the premises form part of land acquired and held for the purposes of a railway, dock, canal or navigation (s. 1 (1) proviso (c)).

8 *Ibid* s 1 (1) proviso (aa); Leasehold Reform Act 1967, s 40 (2).

9 Places of Worship (Enfranchisement) Act 1920, s 3.

10 *Ibid* s 3 proviso. An intermediate reversioner may elect to take compensation in the form of a rentcharge payable for the duration of his unexpired term: s 2 (b).

11 See PARA 1143 post.

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1067. Property of parochial church councils.

A parochial church council¹ may accept and hold any contributions which may be given to it for the ecclesiastical purposes of a parish², and may acquire any property, real or personal, for any ecclesiastical purpose affecting the parish, with power to manage and administer such property³. A parochial church council may not acquire any interest in land, other than a short lease⁴, or in any personal property to be held on permanent trusts, without the consent of the diocesan board of finance⁵. The legal estate of such property vests in the diocesan board of finance⁶.

1 The powers, duties and liabilities of church trustees are now vested in parochial church councils: Parochial Church Councils (Powers) Measure 1956, s 4 (1) (iii). As to these councils, see PARA 568 et seq ante.

2 Compulsory Church Rate Abolition Act 1868, s 9.

3 Parochial Church Councils (Powers) Measure 1956, s 5: see PARA 583 ante.

4 For the meaning of 'short lease', see PARA 583 note 6 ante.

5 Parochial Church Councils (Powers) Measure 1956, ss 1, 6 (1).

6 Ibid ss 1, 6 (2); see PARA 583 ante.

UPDATE

1067 Property of parochial church councils

TEXT AND NOTE 2--1868 Act s 9 repealed: Church of England (Miscellaneous Provisions) Measure 1992, Sch 4 Pt I.

TEXT AND NOTE 5--1956 Measure s 6(1) does not apply and is deemed never to have applied in relation to an advowson or share in an advowson: Church of England (Miscellaneous Provisions) Measure 1992 s 10(1).

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(iii) Consecration of Churches and Churchyards

1068. Necessity for consecration.

As a building does not become a church in the eye of the law until it is consecrated¹, a church must be set aside for ever to sacred uses before it can become the church of a separate parish. There is no corresponding necessity for the consecration of a churchyard, but the practice of consecrating a churchyard in connection with a parish church has become so general that a consecrated church and, in a rural district, a churchyard have come to be regarded as requisite for the complete performance of the offices of the church in a parish, and as the natural centre and basis of the parochial organisation².

1 3 Co Inst 203. Cf. the definition of 'church' in the Interpretation Measure 1925, s 3 (see PARA 302 note 3 ante), and in the Pastoral Measure 1968, s 90 (1) (see PARA 865 note 1 ante). In recent practice, however, the process of consecration has sometimes been omitted, and places of worship which would normally have been consecrated in the past have been simply dedicated: see PARA 1308 note 6 post.

2 As to the relevance of consecration for the purposes of the faculty jurisdiction, see PARA 1306 et seq post.

UPDATE

1068 Necessity for consecration

NOTE 1--1968 Measure s 90(1) now Pastoral Measure 1983 s 87(1).

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1069. Act of consecration.

By the act of consecration property is dedicated to God or to His service, and when real estate has thus been legally consecrated it will retain the ecclesiastical character thus bestowed upon it whoever may be the actual owner and whatever may be the nature of his tenure¹.

Consecration is effected by the decree of a competent ecclesiastical court. The act or sentence of consecration signed by the bishop setting aside land or buildings in *sacros usus* is what constitutes the legal act of consecration, and the effect of this is that the property consecrated is separated for ever from the common uses of mankind² and is set apart solely for sacred purposes for all time or until the decree has been set aside by the like authority or the legal effects of consecration extinguished by virtue of statutory³ provisions⁴.

1 See PARA 1073 post.

2 *Wright v Ingle* (1885) 16 QBD 379 at 399, CA.

3 For relevant statutory provisions, see PARA 1073 et seq post.

4 *Wood v Headingley-cum-Burley Burial Board* [1892] 1 QB 713 at 725. The act of consecration is effective notwithstanding that a statutory provision requiring the sanction of a Secretary of State to the allocation of the land to be consecrated has not been complied with: *Williams v Briton Ferry Burial Board* [1905] 2 KB 565. Upon the question whether a further act of consecration is required where the church is rebuilt on the same foundations, see *Parker v Leach* (1866) LR 1 PC 312; but where an extension of the chancel is built on unconsecrated ground, it must be consecrated: *St Barnabas, Kensington* (1909) 25 TLR 571. For a form of sentence on consecration, see Forms and Precedents.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1070. Preliminaries to consecration.

1070. Preliminaries to consecration.

A church or chapel may be erected before consecration of the ground, and may with the bishop's consent be used for divine service and the administration of sacraments, but it does not thereby become a church in the eye of the law¹. For this, consecration is essential, and in order that the dedication may be certain it is always required that the freehold of the ground on which the church is to be erected shall have been secured². This having been done, and the conveyance of the land having been effectively executed in the form appropriate in the particular circumstances so as to vest the land in the incumbent, in the Church Commissioners or in some corporation or persons as trustees, as the case may be³, a petition is presented to the bishop⁴ reciting the conveyance and requesting him to separate the land or land and buildings from all profane and common uses and to dedicate the same to God and divine worship, and to consecrate it for the celebration of divine offices or for such other ecclesiastical purposes as are desired, according to the doctrine and discipline of the Church of England⁵.

1 See PARA 1068 ante.

2 Whether or not Canon 16 of the Council of London (1102), 'ne ecclesia sacratur donec providiantur necessaria et presbytero et ecclesiae', ever became part of the canon law of the Church of England, it provided a rule which has in the main been adhered to: *St Mary, Bishopstoke* (1909) 26 TLR 86; see *Sedgwick v Bourne* [1920] 2 KB 267. For an exception authorised by Act of Parliament, see 30 Geo. 3 c. 69 (St James Church, Clerkenwell) (1790) where trustees were authorised to purchase land held under a perpetually renewable lease and a chapel of ease erected on it and to cause it to be consecrated.

3 For the forms of conveyance appropriate for the purpose, see Forms and Precedents where, however, no example of a conveyance to the commissioners under the New Parishes Measure 1943, s 13, is included as the conveyance has to be in such form as the commissioners prescribe (s. 13 (3)), and they will prepare the draft. See also the Church Commissioners Measure 1947, s 18 (2).

4 For a form of petition, see Forms and Precedents.

5 The fees payable for consecration of a church and burial ground, or a church without a burial ground, are £21, and for consecration of a burial ground or cemetery alone £15.75: Legal Officers Fees Order 1964, S.I. 1964 No. 1033, Schedule, Table III, made under the Ecclesiastical Fees Measure 1962, s 1.

UPDATE

1070 Preliminaries to consecration

NOTE 5--As to current fees orders, see PARA 1204.

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1071. Consecration ceremony.

When the preliminaries¹ are complete the bishop, with such religious ceremonial as he thinks fit, proceeds to consecrate the land or land and buildings, and to declare by sentence² that he thereby separates and sets them apart from all profane and common uses whatsoever, and dedicates them to the service of Almighty God for the performance of divine offices according to the liturgy and usages of the Church of England as by law established. He consecrates them for the use intended and openly and publicly pronounces, decrees and declares them to be so separated, dedicated and consecrated, and that they ought to remain so for ever, saving, in the case of a chapel of ease, any rights which are reserved in favour of the mother church³.

1 See PARA 1070 ante.

2 For the form of sentence on consecration, see Forms and Precedents. According to the customary form of service of consecration, which has been in general use, with some variations, for several centuries, the sentence of consecration is to be read by the chancellor: see Phillimore, Ecclesiastical Law (2nd Edn) 1390 et seq. In practice it is sometimes read by the diocesan registrar, whose presence in any case seems to be necessary.

3 As to churches subject to a sharing agreement, see PARA 1191 post.

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1072. Consecration of additional ground.

Where any ground adjoining¹ an existing² churchyard has been or is added to it the bishop of the diocese may, if he thinks fit, at the churchyard or in the church to which it belongs, by his own hand or by the hand of any bishop of the Church of England lawfully appointed as his commissary, sign an instrument declaring or recording the consecration of the ground, without the presence of the chancellor or registrar of the diocese being necessary³. The bishop's signature to the instrument is to be attested by the chancellor, by a surrogate or by any two clergymen of the diocese⁴. On being so signed and attested, and deposited in the diocesan registry, the instrument has the same effect as a sentence of consecration⁵.

1 Land may 'adjoin' an existing churchyard within this provision even if it is separated from it by a highway: *Re Baroness Bateman and Parker's Contract* [1899] 1 Ch 599.

2 This probably means existing for the time being.

3 Consecration of Churchyards Act 1867, s 1.

4 Ibid s 1. The instrument, indorsed on a plan of the ground so added, reads 'I, A.B., Bishop of ..., do hereby declare and record the ground added to the churchyard of ..., as on the within plan, to be consecrated ground and part of the said churchyard'. Where land to be conveyed for an addition to a churchyard is to be consecrated in this way the statutory form of conveyance set out in s 5 may be used, although such use is optional. A gift for the purpose of the Act is exempt from stamp duty: s 6. As to fees, see s 2; Ecclesiastical Fees Measure 1962, ss 1, 8 (1), Schedule, Part I; and see PARA 1204 post.

5 Consecration of Churchyards Act 1867, s 1.

UPDATE

1072 Consecration of additional ground

TEXT AND NOTE 3--For 'lawfully appointed as his commissary' read 'appointed by him for the purposes of the 1867 Act s 1': s 1 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 13(a)).

TEXT AND NOTE 4--For 'any two clergymen of the diocese' read 'a clergyman beneficed or licensed to serve in the diocese or by the churchwardens of the church in question': 1867 Act s 1 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 13(b)).

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1073. Use of consecrated ground for secular purposes.

When consecrated a church or churchyard ceases to be the property of the donor, who, by dedicating his property to God, voluntarily sacrifices it for the attainment of sacred objects¹. Thereafter, in strictness only the authority of an Act of Parliament or Measure of the Church Assembly or General Synod can divest it of its sacred character, and a faculty should not be granted for applying it to secular purposes². Deviations from the strict rule are, however, frequently allowed, and faculties may be granted for various purposes consonant with modern requirements³. Thus, while there are limits upon the grant of faculties for the secular use of consecrated land⁴, it may be possible to authorise by faculty the use of a portion of the consecrated ground for purposes which are advantageous to persons using the church⁵, to the parishioners⁶, or to the public⁷.

In proper cases, a faculty will be granted for appropriating a portion of a churchyard for widening a public highway, at any rate where the churchyard is closed for burials⁸, or for making and fencing a pathway across a churchyard as a private way to adjoining premises⁹.

The performance of a play in a church may require a licence¹⁰.

1 *Hilcoat v Archbishops of Canterbury and York* (1850) 10 CB 327 at 347.

2 See *R v Twiss* (1869) LR 4 QB 407 at 412, per Cockburn CJ; *Rector etc of St George's, Hanover Square v Steuart* (1740) 2 Stra 1126; *Campbell v Parishioners and Inhabitants of Paddington* (1852) 2 Rob Eccl 558 at 559; *Re John's, Chelsea* [1962] 2 All ER 850 at 852, [1962] 1 WLR 706 at 708. Contrast *Wood v Headingley-cum-Burley Burial Board* [1892] 1 QB 713 at 725.

3 See *Sutton v Bowden* [1913] 1 Ch 518 at 551, per Farwell LJ.

4 It has been held that there is no jurisdiction to grant a faculty for the secular use of consecrated land, except for the purpose of throwing part of a churchyard into a highway or for other rights of user over a churchyard in the nature of wayleaves, unless the original purpose of consecration can no longer be carried out: *Re St John's, Chelsea* [1962] 2 All ER 850, [1962] 1 WLR 706, where a faculty for the use of the site of a demolished church as a car park was refused; and see *Morley Borough Council v Vicar and Churchwardens of St Mary The Virgin, Woodkirk* [1969] 3 All ER 952, [1969] 1 WLR 1867; *Re St Peter's, Bushey Heath* [1971] 2 All ER 704 at 706, [1971] 1 WLR 357 at 360. The consistory court's jurisdiction to grant a faculty for the secular use of unconsecrated land within the curtilage of a church may be wider, but it must be sparingly exercised: *Re St Peter's, Bushey Heath* supra (where a faculty for an access 'splay' was granted); and see *Re St John's Church, Bishop's Hatfield* [1967] P 113, [1966] 2 All ER 403 (faculty for a youth centre granted); *Re Christ Church, Chislehurst* [1974] 1 All ER 146, [1973] 1 WLR 1317 (faculty granted for land to be used for private access); and see PARA 1308 post.

5 *Vicar of St Nicholas, Leicester v Langton* [1899] P 19; *Vicar and One Churchwarden of St Botolph without Aldgate v Parishioners of St Botolph without Aldgate* [1892] P 161.

6 Thus faculties have been granted, in the case of closed churchyards, for the construction of chambers under a churchyard for the storing and transformation of electricity (*Re St Nicholas Cole Abbey, Re St Benet Fink Churchyard* [1893] P 58), and for flights of steps and entrances to give access to chambers for storing electricity constructed under a street adjoining the churchyard (*Re St Benet, Sherhog* [1893] P 66 n); but the former decision was disapproved on the ground that the faculty was in contravention of the Disused Burial Grounds Act 1884, s 3, in *Rector and Churchwardens of St Nicholas Acons v LCC* [1928] AC 469, PC; and see *Re St Peter the Great, Chichester* [1961] 2 All ER 513, [1961] 1 WLR 907 (faculty for erection of electricity sub-station in a disused burial ground granted). There is no jurisdiction to grant a faculty allowing a cover to be suspended over a footpath in a disused churchyard, since it involves the erection of a 'building' within the meaning of the Disused Burial Grounds Act 1884 and is therefore prohibited: *Re St Mark's Church, Lincoln* [1956] P 166, [1955] 3 All ER 699; affd. [1956] P 336, [1956] 2 All ER 579 (faculty granted for a footpath and its paving only). See also *Re St Clement, Eastcheap, with St Martin Orgar* [1964] P 20, [1964] 1 All ER 47 (faculty

granted for use of disused churchyard as private garden subject to rights of access for the rector and churchwardens and the parishioners); *Re St Paul's, Covent Garden* [1974] Fam 1, (use of closed churchyard as a car park); and the cases cited in notes 7, 8 infra. Faculties were formerly granted in some cases for the erection of schools or vestry rooms etc. in disused burial grounds (*Campbell v Parishioners and Inhabitants of Paddington* (1852) 2 Rob Eccl 558; *Russell v Parishioners of St Botolph, Bishopsgate* (1859) 5 Jur NS 300; *Re Bettison* (1874) LR 4 A & E 294; *Hansard v Parishioners of St Matthew, Bethnal Green* (1878) 4 PD 46; *St George's, Hanover Square, Burial Board v Hall* (1879) 5 PD 42), but faculties for such purposes could not in general be properly issued now, in view of the provisions of the Disused Burial Grounds Act 1884, restricting building in disused burial grounds; see now para 1317 post, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1146 et seq. A faculty was granted authorising the building of an elementary school in *Corke v Rainger and Higgs* [1912] P 69; *Rector etc of St Margaret's Lothbury v LCC* [1909] P 310 (erection of choir vestry); *Re St Mary's, Luton* [1967] P 151; affd. [1968] P 47, [1966] 3 All ER 638 (faculty for use of a disused burial ground for enlargements including a hall). See *LCC v Dundas* [1904] P 1 by which, apparently, *Vicar of St James-the-Less, Bethnal Green v Parishioners of St James-the-Less, Bethnal Green* [1899] P 55, must be overruled; *Re St Sepulchre, Holborn Viaduct* (1903) 19 TLR 723.

7 *Lee v Hawtrey* [1898] P 63; *LCC v Vicar etc of All Saints, Fulham* (1933) Times, 29th May.

8 *Re Bideford Parish, ex parte Rector etc of Bideford* [1900] P 314 (a decision of Sir A. Charles in the Court of Arches, explaining *Harper v Forbes and Sisson* (1859) 5 Jur NS 275); *Morley Borough Council v Vicar and Churchwardens of St Mary The Virgin, Woodkirk* [1969] 3 All ER 952, [1969] 1 WLR 1867 (faculty granted to enable a road improvement scheme to be carried out); and see *Re St John's, Chelsea* [1962] 2 All ER 850, [1962] 1 WLR 706. The previous decisions of the consistorial courts on the point had been divergent: see *Rector and Churchwardens of St John's, Walbrook v Parishioners of St John's, Walbrook* (1852) 2 Rob Eccl 515; *Vicar and One Churchwarden of St Botolph without Aldgate v Parishioners of St Botolph without Aldgate* [1892] P 161; *Vicar and Churchwardens of St Andrew's, Hove, and Hove Comrs v Mawn and Rowe* (1894) [1895] P 228 n; *Re Plumstead Burial Ground* [1895] P 225; *Vicar of St Nicholas, Leicester v Langton* [1899] P 19. See also *Vicar of St John the Baptist, Cardiff v Parishioners of St John the Baptist, Cardiff* [1898] P 155 (faculty granted for the formation of a footpath across a closed churchyard for the use of the parishioners and public, subject to provisions for the closing of the path one day in the year to show that it remained an integral part of the churchyard); and *Re St Mark's Church, Lincoln* [1956] P 166, [1955] 3 All ER 699; affd. [1956] P 336, [1956] 2 All ER 579 (faculty granted for a right of way and its paving). The court has no jurisdiction to allow the use of a closed churchyard as part of the public highway where it has been dedicated for use as an open space under the Open Spaces Act 1906: *Ex parte Uxbridge UDC* (1914) 30 TLR 448; followed in *Ex parte West Riding County Council* (1935) 52 TLR 111; and see *Re St Anne, Limehouse* (1915) 31 TLR 539; *Re Hampstead Additional Burial Ground* (1908) Times, 21st May.

9 *Rector etc of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1869] P 95. As to the statutory provisions authorising the utilisation of closed churchyards as open spaces, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1163 et seq. As to the grant of a faculty for the improvement of a disused burial ground, with a view to its enjoyment by the public, before this legislation, see *Re St George-in-the-East* (1876) 1 PD 311.

10 No premises may be used for the public performance of any play except under a licence: Theatres Act 1968, s 12. The licensing authorities are the Greater London Council and district councils: s 18 (1); Local Government Act 1972, s 204 (6). When any church or chapel is to be used for a play, concert or exhibition of films or pictures, the minister must take care that the words, music and pictures are such as befit the House of God, are consonant with sound doctrine, and make for the edifying of the people: Revised Canons Ecclesiastical, Canon F16 para 1. The minister must obey the general directions of the bishop and refer to him in cases of doubt: Canon F16 paras 2, 4. Precautions against fire and other dangers must be approved by the authorities concerned: Canon F16 para 3.

UPDATE

1073 Use of consecrated ground for secular purposes

TEXT AND NOTES--As to who are the necessary petitioners for a faculty authorising such use, see *Re St Mary, Aldermary* [1985] 2 All ER 445. The consistory court or commissary court has jurisdiction to make a diversion order in respect of money received as consideration for grant of a licence executed under the authority of a faculty: *Re Consecrated land in Camomile Street* [1990] 3 All ER 229, applying *Re St John's, Chelsea*, cited. See also *Re All Saints, Harborough Magna* [1992] 4 All ER 948.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 2-9--A faculty may not confer a full legal easement of way through a churchyard but only a licence. The fact that a churchyard is closed to burials enables the court to allow limited secular use of it: *Re St Martin le Grand, York; Westminster Press Ltd v St Martin with St Helen, York (Incumbent and Parochial Church Council)* [1989] 2 All ER 711.

NOTE 3--See *Re Holy Trinity, Knaresborough; Re St Margaret's, Hawes* [2004] 1 All ER 71 (faculty granted for erection of telecommunications mast on church tower on ground that mobile telephones had become valuable community resource and so it was appropriate that church buildings, where possible, were also part of that important resource); applied in *Re Bentley Emmanuel Church, Bentley* [2006] Fam 39. It is important not to lose sight of the great benefits that flow from the introduction of new technology in carrying out a balancing exercise when assessing the risk from evildoers, in deciding whether to grant a faculty which would facilitate mobile telephone network coverage: *Re St Peter and St Paul's Church, Chingford* (2007) Times, 8 October.

TEXT AND NOTE 10--Theatres Act 1968 s 12, definition of 'licensing authority' in s 18(1); Local Government Act 1972 s 204 repealed: Licensing Act 2003 Sch 6 paras 44(b), 47, Sch 7.

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1074. Alienation of consecrated ground for secular uses.

It is not possible to alienate consecrated land or buildings completely from sacred uses and to appropriate them permanently to secular uses without the authority of an Act of Parliament¹ or a Measure of the Church Assembly or General Synod².

Certain provisions enabling such alienation to be authorised are contained in the Pastoral Measure 1968. A pastoral scheme³ may provide for the appropriation of the whole or part of a churchyard or other land annexed or belonging to a church (other than a redundant church⁴) or any burial ground vested in the incumbent of a benefice to such use or uses as may be specified, and may provide for the disposal of such property for such use or uses or without limitation of use⁵. Similarly, a redundancy scheme⁶ may provide for the appropriation of a redundant church and any land annexed or belonging to it for such use or uses as may be specified, and where a redundant church is to be demolished the scheme may provide for the disposal of the site of the church and any land annexed or belonging to it and for specifying how the land so disposed of is to be used or allowing it to be used without limitation⁷. Where a redundant church or land annexed or belonging to it is vested in the Church Commissioners pursuant to a pastoral scheme or redundancy scheme⁸, or is appropriated to a use or uses specified in the scheme, then, unless the scheme otherwise provides, the legal effects of consecration cease to apply to the building and land and, in particular, the jurisdiction to grant faculties ceases to extend to the building and land⁹.

Except in the pursuance of powers under the above provisions or of any powers exercisable under any Act of Parliament¹⁰, it is not lawful to sell, lease or otherwise dispose of any church (or part of it) or the site (or part of it) of any church or any consecrated land belonging or annexed to a church¹¹; however, this does not prevent the grant of a faculty authorising a suitable use of part of a church or the grant of any faculty in respect of any such land¹².

Another important instance of the possibility of such alienation is found in the provisions whereby consecrated land may be compulsorily acquired by a purchasing authority¹³. Such land can, subject to compliance with certain conditions, be used in conformity with planning control or for the purposes for which it was acquired notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise with respect to the land¹⁴.

Land granted for burials and consecrated for that purpose does not, unless under the provisions of a special Act of Parliament, revert to the grantor upon the discontinuance of burials in it¹⁵.

1 *Harper v Forbes and Sisson* (1859) 5 Jur NS 275.

2 It has repeatedly been held that it is impossible to alienate or create any legal estate in consecrated land without the authority of an Act or Measure: *Rector and Churchwardens of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95; *Re St Peter's, Bushey Heath* [1971] 2 All ER 704 at 706, [1971] 1 WLR 357 at 360; citing *Vicar and Churchwardens of St Mary Abbots, Kensington v St Mary Abbots, Kensington Inhabitants* (1873) Trist 17; and see *Re St Swithin's, Norwich* [1960] P 77, [1959] 3 All ER 301, where it was held that the court had no jurisdiction to grant a faculty to allow a rector, in whom the freehold of consecrated land was vested, to grant an option to take a lease of it.

3 As to pastoral schemes, see PARA 856 et seq ante.

4 The provisions relating to redundant churches are contained in the Pastoral Measure 1968, s 28, Part III (ss. 42-66): see PARA 1119 et seq post.

5 Ibid s 30 (1). Such a scheme may also provide for the appropriation and disposal of such property: s 30 (3). The scheme has effect notwithstanding the Disused Burial Grounds Act 1884, s 3 (which restricts the erection of buildings on disused burial grounds), if certain conditions are satisfied: see the Pastoral Measure 1968, s 30 (2). See further CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

6 As to redundancy schemes, see PARAS 1121, 1122 post.

7 See the Pastoral Measure 1968, s 51. In limited cases a pastoral scheme may provide for these matters without the need for a redundancy scheme: see ss 46, 47, and PARA 1120 post.

8 The vesting of the building and the land is provided for under ibid s 59: see PARA 1125 post.

9 See ibid s 61, and PARA 1076 post.

10 See eg note 13 infra. As to provision for the transfer of a disused burial ground to a local authority for use as a public open space, see PARA 1317 post.

11 Pastoral Measure 1968, s 56 (2), (3) (b); and see PARA 1056 ante, 1080 post. It has been held to be possible to dispose of unconsecrated church curtilage under the authority of a faculty: see *Re St Peter's, Bushey Heath* supra; *Re St John's Church, Bishop's Hatfield* [1967] P 113, [1966] 2 All ER 403; and see *Re Christ Church, Chislehurst* [1974] 1 All ER 146, [1973] 1 WLR 1317, where a faculty was granted to the vicar allowing the sale of unconsecrated curtilage of a church; and PARA 1080 post. For a decision to the contrary, see *Re St George's Church, Oakdale* [1975] 2 All ER 870. See also PARA 1073 text and note 2 ante.

12 Pastoral Measure 1968, s 56 (3) (a).

13 Ie under the Town and Country Planning Act 1971, Part VI (ss. 112-133), as amended.

14 Ibid s 128 (1). Before the land can be used for secular purposes the prescribed requirements have to be observed: s 128 (2). The Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, S.I. 1950 No. 792, have effect under this section as if made for the purposes of the Town and Country Planning Act 1971, s 128: see s 292, Sch. 24 para 1. See also the New Towns Act 1965, s 20 (repealed); and see generally TOWN AND COUNTRY PLANNING. There are special provisions with regard to land which has been used for burials: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1170.

15 *Campbell v Liverpool Corp'n* (1870) LR 9 Eq 579. Cf. the Places of Worship Sites Act 1873, s 1 proviso, and PARA 1065 ante.

UPDATE

1074 Alienation of consecrated ground for secular uses

TEXT AND NOTES 3-5--1968 Measure consolidated in Pastoral Measure 1983. Now a pastoral scheme may provide for the appropriation of the whole or any part of (a) a churchyard or other land annexed or belonging to a church or to a parish church cathedral within the meaning of Cathedrals Measure 1963, or (b) any burial ground vested in the incumbent of the benefice but not annexed or belonging to a church, or (c) any other burial ground which is subject to the jurisdiction of the bishop of any diocese, to such use or uses as may be specified or generally described in the scheme, and the scheme may provide for the disposal of any such property for such use or uses or without limitation of use: 1983 Measure s 30(1).

The above provisions do not apply to a churchyard or other land annexed or belonging to a church to which a declaration of redundancy relates unless the scheme by which provision was made for the use, the care and maintenance, the vesting in the Diocesan Board of Finance or the demolition of the church contained no provision for dealing with the land which is to be the subject of the proposed scheme: ibid s 30(2).

In the case of a churchyard or other land annexed or belonging to a church or a burial ground adjacent to a church, the pastoral scheme must make such provision as appears to the bishop and the commissioners to be desirable for safeguarding the use

and amenities of the church or to be necessary for preserving a right of access to any grave in that land or burial ground: *ibid* s 30(3).

NOTE 4--Now Pastoral Measure 1983 s 28 Pt III (ss 41-66).

NOTE 5--1968 Measure s 30(2), (3) now 1983 Measure s 30(4), (5).

NOTE 7--Now *ibid* ss 51, 46, 47.

NOTE 8--Now *ibid* s 59.

NOTE 9--Now *ibid* s 61.

TEXT AND NOTES 11, 12--Now *ibid* s 56(2) (amended by the Pastoral (Amendment) Measure 2006 s 1(a)), 1983 Measure s 56(3)(a), (b). Without prejudice to s 56(3)(a), on an application by the incumbent of the benefice comprising or including the parish in which the church is situated or, where the benefice is vacant, the bishop in the name and on behalf of the incumbent in the corporate capacity of the incumbent, the court may grant a faculty for a lease to be granted by the incumbent or, as the case may be, the bishop, of part of a church, provided that the court ensures that the premises remaining unlet, together with the premises let, under any lease or leases granted under s 56(2A) (s 56(2A)-(2L) added by the 2006 Measure s 1(b)), are, taken as a whole, used primarily as a place of worship: 1983 Measure s 56(2A). On an application by any person referred to in s 56(2A) the court may, whether it grants a faculty under s 56(2A), grant a faculty for the lease of any land belonging to or annexed to a church: s 56(2B). The parochial church council for the parish in which the church or land is situated is a party to any lease granted under s 56(2A) or (2B) and, without prejudice to the rights and obligations of the lessor, has the same rights as the lessor to enforce any term of the lease which may be binding on the lessee, including any rights to forfeit the lease or to distrain on the property of the lessee: s 56(2C). Subject to any directions of the court, any rent or other payment payable under any lease granted under s 56(2A) or s 56(2B) must be paid to the parochial church council: s 56(2D). Subject to s 56(2D), (2F) (*infra*), any such lease is to be for such period, and may contain such terms, as the court may determine and the lease or any terms contained therein may be varied at any time by the court on application by any party to the lease or otherwise as authorised by the court: s 56(2E). Any such lease is deemed to contain the following terms: (1) in the case of a lease of part of a church granted under s 56(2A), the premises which are the subject of the lease must not be used for purposes which are, or in a way which is, inconsistent with the use specified in s 56(2A); and (2) in the case of a lease granted under s 56(2A) or s 56(2B), no use is permitted for residential purposes except by a person who, as an employee of the lessor or otherwise, is required, as a condition of the employment or contract, to reside in the premises or part thereof, and the lease is deemed to contain a covenant on the part of the lessee to perform the said terms: s 56(2F). Where any lease is granted under s 56(2A) or s 56(2B) (a) in the case of a lease of premises to trustees to be held on trust to be used for the purposes of a place of worship, the trustees are not entitled to exercise the right conferred by the Places of Worship (Enfranchisement) Act 1920 (see PARA 1066) to enlarge the leasehold interest by acquiring the freehold; (b) in the case of a lease consisting of a tenancy of premises occupied or to be occupied wholly or partly for the purposes of a business, the tenancy is not to be subject to any provision of the Landlord and Tenant Act 1954 Pt II (ss 23-46) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 706 *et seq*) under which the lease is continued until determined, or under which the tenant is entitled to apply to the court for the grant of a new tenancy, in accordance with the provisions of Pt II; and (c) in the case of a lease of land consisting of a tenancy which would, but for the 1983 Measure s 56(2G), be a farm business tenancy to which the Agricultural Tenancies Act 1995 (see LANDLORD AND TENANT) applied, the 1995 Act does not apply to the tenancy and, accordingly, the

tenant is not entitled to exercise any of the rights conferred by Pts I-III: 1983 Measure s 56(2G). Without prejudice to s 84, where at any time, there is no parochial church council, the foregoing provisions of s 56 are to have effect and any lease granted under s 56(2A) or s 56(2B) is to be construed as if, for any reference therein to the council, there were substituted a reference to the churchwardens: s 56(2H). Where a lease has been granted under s 56(2A) or s 56(2B) and, at any times, the benefice is vacant, the bishop in the name and on behalf of the incumbent in the incumbent's corporate capacity may exercise the power conferred on the lessor by s 56(2E) to apply to the court for a variation of the lease or any terms therein and the lease is to be construed as if any reference therein to the incumbent were a reference to the bishop acting in the name and on behalf of the incumbent as aforesaid: s 56(2I). Any question relating to the interpretation or enforcement of any term of any lease granted under s 56(2A) or s 56(2B) is to be determined by the court and the Faculty Jurisdiction Measure 1964 s 11 (see PARA 1328) applies in relation to proceedings under the 1983 Measure s 56(2E) and s 56(2J) as it applies to the proceedings mentioned in the 1964 Measure s 11: 1983 Measure s 56(2J). The Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 16(2), so far only as it applies to the archdeacon, s 16(3), (4), apply to proceedings under the 1983 Measure s 56(2A), (2B), (2E), (2J) as they apply to other proceedings for a faculty: s 56(2K). In s 56, except head (b), 'the court' means the consistory court of the diocese in which the building is situated or, in the case of the diocese of Canterbury, the commissary court thereof and the 1991 Measure (see PARAS 1306, 1321, 1331-1333) does not apply to the jurisdiction of the court conferred by the foregoing provisions of the 1983 Measure s 56: s 56(2L). The power of the bishop of a diocese under the 1991 Measure s 22 to make an order directing that a building or land is not subject to the legal effects of consecration (see PARA 1076A) is also excluded from the restriction: 1983 Measure s 56(3)(c); 1991 Measure Sch 7.

Re St George's Church, Oakdale, cited, not followed in *Re St Mary Magdalene, Paddington* [1980] Fam 99, [1980] 1 All ER 279 (unconsecrated churchyard authorised to be conveyed under authority of a faculty). The 1983 Measure s 56(2) does not apply to a school chapel consecrated to divine worship and not public worship: *Re Tonbridge School Chapel (No 2)* [1993] 2 All ER 338.

TEXT AND NOTE 13--Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant, it is to be treated as being vested in the Diocesan Board of Finance for the diocese in which the land is situated for the purpose of serving notice to treat for compulsory acquisition: Church of England (Miscellaneous Provisions) Measure 1978 s 8 (amended by Church of England (Miscellaneous Provisions) Measure 2006 s 11). 1971 Act consolidated in Town and Country Planning Act 1990: see TOWN AND COUNTRY PLANNING.

NOTE 14--See also Local Government, Planning and Land Act 1980 s 144, Sch 28; and TOWN AND COUNTRY PLANNING. 1971 Act consolidated: see TEXT AND NOTE 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1075. Subjection to the Ordinary.

1075. Subjection to the Ordinary.

The effect of consecration is to subject the land consecrated to the Ordinary¹, who thenceforth has jurisdiction to see that in the consecrated ground the laws of the church are observed, and in particular to see that in consecrated places of burial all conditions which those laws require in relation to the bodies of persons buried there are observed. This jurisdiction is not confined to occasions when it is necessary to remove a body but extends to all such acts as are necessary in the interests of justice or of the decent and respectful treatment of the dead. Except where a body is removed from one place of burial consecrated according to the rites of the Church of England² to another and subject also to certain statutory exceptions³, a licence from a Secretary of State is a condition precedent to the removal⁴, but not to the granting of the faculty⁵, which will be granted subject to the provision that the Secretary of State's licence be obtained, except in cases where there is a doubt whether such licence is necessary⁵. A faculty may be granted subject to a similar licence to remove a body from consecrated to unconsecrated ground or to ground consecrated in accordance with the rites of the Roman Catholic Church⁶.

The Ordinary's permission is generally necessary before any alteration can be lawfully effected to the place consecrated or its contents⁷. In general all parish churches and their churchyards and most consecrated burial grounds are within the jurisdiction of the bishop as Ordinary and the episcopal sanction is required and is sought by petitioning for a faculty⁸ in the consistory court where the chancellor by delegation is for this purpose the Ordinary⁹. In certain circumstances permission may instead be obtained by means of the archdeacon's certificate¹⁰.

Where unconsecrated land forms, or is part of, the curtilage¹¹ of a church within the jurisdiction of an ecclesiastical court, that court has the same jurisdiction over that land as it has over the church¹².

Where the bishop has licensed a building for public worship he may order that it be subject to the faculty jurisdiction of the court of the diocese during the period specified in the order as though it were a consecrated church¹³.

1 For the meaning of 'Ordinary', see PARA 458 ante.

2 *Re Talbot* [1901] P 1.

3 See CREMATION AND BURIAL vol 10 (Reissue) PARA 1128.

4 Burial Act 1857, s 25.

5 *R v Tristram* [1898] 2 QB 371.

6 *Re v Talbot* [1901] P 1; *Re Seward and Casella* (1909) Times, 27th November; see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125 et seq.

7 *Lee v Hawtrey* [1898] P 63.

8 See PARA 1308 et seq post.

9 See PARA 1275 post.

10 Faculty Jurisdiction Measure 1964, s 12: see PARA 1331 post.

11 For land to be curtilage of a church, the church and curtilage must be occupied together; they must belong together in a physical sense, and their titles must not be such as to conflict with their belonging together: *Re St John's Church, Bishop's Hatfield* [1967] P 113, [1966] 2 All ER 403.

12 Faculty Jurisdiction Measure 1964, s 7 (1). For the avoidance of doubt, this section does not render unlawful any act done or proceedings taken in good faith before the passing of the Measure (ie 15th April 1964), nor does it require the issue of faculties confirming such acts: s 7 (2). Unconsecrated church curtilage has probably always been within the faculty jurisdiction: *Re St Peter's, Bushey Heath* [1971] 2 All ER 704 at 706, [1971] 1 WLR 357 at 360. See also PARA 1308 post.

13 Faculty Jurisdiction Measure 1964, s 6 (1). See also PARA 1308 post.

UPDATE

1075 Subjection to the Ordinary

TEXT AND NOTE 13--1964 Measure s 6(1) amended to refer only to orders made prior to the coming into force of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 11: *ibid* Sch 7 (see PARA 1308).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1076. Effects of redundancy on consecrated land and buildings.

1076. Effects of redundancy on consecrated land and buildings.

Where any consecrated building or part of a building or land is vested in the Church Commissioners¹ or is appropriated to a use or uses specified or described in a redundancy scheme² or pastoral scheme³, then, unless the scheme otherwise provides, the building or part of the building or land ceases to be subject to the legal effects of consecration⁴. In particular the jurisdiction of any court or person to grant faculties ceases to extend to the building or part of the building or land⁵. Where any consecrated building or part of a building or land is vested in the Redundant Churches Fund⁶, that jurisdiction ceases to extend to it, and any works or alterations may be carried out without the need for a faculty, but save as aforesaid the building or land continues to be subject to the legal effects of consecration⁷. The foregoing provisions do not apply to land appropriated to use for religious worship in accordance with the rites of the Church of England⁸.

1 Ie under the Pastoral Measure 1968, s 59: see PARA 1125 post.

2 As to appropriation to a use or uses under a redundancy scheme, see *ibid* s 51, and PARA 1122 post.

3 Ie a pastoral scheme to which *ibid* s 46 or s 47 applies: see PARA 1120 post.

4 *Ibid* s 61 (1) (a). As to redundancy, see PARA 1119 et seq post.

5 *Ibid* s 61 (1) (b).

6 Ie under *ibid* s 59: see PARA 1125 post.

7 *Ibid* s 61 (2).

8 *Ibid* s 61 (3). If any building or part of a building or land which ceases to be subject to the legal effects of consecration under the foregoing provisions is subsequently restored to its former use or is appropriated to another use for which consecration would be required, the legal effects of consecration are revived: s 61 (3).

UPDATE

1076 Effects of redundancy on consecrated land and buildings

TEXT AND NOTES--As to the removal of the legal effects of consecration see PARA 1076A.

NOTE 1--Now Pastoral Measure 1983 s 59 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 18; and Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 5).

NOTE 2--Now Pastoral Measure 1983 s 51 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 15).

NOTE 3--Now Pastoral Measure 1983 s 46 or s 47.

TEXT AND NOTES 4, 5--Now Pastoral Measure 1983 s 61(1). These provisions also apply where any such building or land is vested in the Diocesan Board of Finance in pursuance of a redundancy scheme: s 61(1).

NOTE 6--Now Pastoral Measure 1983 s 59 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 18; and Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 5).

TEXT AND NOTES 7, 8--Now Pastoral Measure 1983 s 61(2), (3) (as amended: see TEXT AND NOTES 7, 8).

TEXT AND NOTE 7--After 'aforesaid' read 'and subject to any terms included in a lease under Pastoral Measure 1983 s 44(7A)' (see PARA 1137): s 61(2); Pastoral (Amendment) Measure 1994 s 7.

TEXT AND NOTE 8--The words 'The foregoing provisions ... Church of England' are omitted: Pastoral Measure 1983 s 61(3); Pastoral (Amendment) Measure 1994 s 7.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1076A. Removal of legal effects of consecration.

1076A. Removal of legal effects of consecration.

Where the bishop of a diocese, on the application of the archdeacon in respect of any building or land which is subject to the legal effects of consecration, is satisfied that (a) the building or land is not held or controlled by any ecclesiastical corporation or by any diocesan board of finance, and (b) no purpose will be served by its remaining subject to the legal effects of consecration, he may by order direct that it will not, in whole or in part, be subject to the legal effects of consecration¹. The order may impose such conditions and requirements as the bishop thinks fit as to (i) the preservation or disposal of any human remains believed to be buried in or beneath any building or in any land and of any tombstones, monuments or memorials commemorating the deceased persons, and (ii) the maintenance of orderly behaviour in or on the building or land². Where an order is made, the building or land ceases to be subject to the legal effects of consecration and, in particular, the jurisdiction of any court or person with respect to the granting of faculties ceases to extend to it³. Any conditions or requirements are enforceable as if the archdeacon was the owner of adjacent land and the conditions or requirements were negative covenants expressed to be entered into for the benefit of the adjacent land⁴. The enforcement of a condition or requirement is deemed to be for the benefit of the archdeacon⁵. A condition or requirement is a local land charge and the bishop by whom the order was made is treated as the originating authority as respects the charge constituted by the condition or requirement⁶.

These provisions apply in relation to Crown land and to buildings situated on Crown land as they apply to other land and buildings⁷. A condition or requirement as to matter falling within head (ii) above must not be imposed by an order except with the consent of the appropriate authority⁸. Any land which is used for the purposes of the Church of England and which will become Crown land on ceasing to be so used or on the exercise of a right of re-entry is to be treated as Crown land⁹.

¹ Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 22(1). The bishop must send every such order to the diocesan registrar, who must register the order in the diocesan registry: *ibid* s 28.

² *Ibid* s 22(2). For the purposes of head (i), an order may apply specified provisions of the Pastoral Measure 1983 s 65, Sch 6 (disposal of human remains) to the building or land: 1991 Measure s 22(2). A condition or requirement as to matter in head (i) cannot be imposed without the consent of the Secretary of State: *ibid* s 22(3). Law of Property Act 1925 s 84 (except s 84(2)) (discharge or modification of restrictions affecting land) does not apply in relation to conditions and requirements: 1991 Measure s 22(7).

³ *Ibid* s 22(4).

⁴ *Ibid* s 22(5).

⁵ *Ibid* s 22(6).

⁶ *Ibid* s 22(8).

⁷ *Ibid* s 23(1).

⁸ *Ibid* s 23(2). 'Crown land' and 'appropriate authority' have the same meanings as in the Town and Country Planning Act 1990 s 293 (see TOWN AND COUNTRY PLANNING); if any question arises as to what authority is the appropriate authority in relation to any building or land, that question must be referred to the Treasury, whose decision is final: 1991 Measure s 23(4).

⁹ *Ibid* s 23(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1077. Ornaments not included in consecration.

1077. Ornaments not included in consecration.

By the act of consecrating a church the bishop does not necessarily consecrate or approve all the ornaments and fittings in it¹. He is assured by the petition presented to him that all things have been rightly done and is entitled to act on that assumption, and if there are any ornaments in the church which are not in accordance with ordinary usage it is the duty of those who apply for consecration to call the bishop's attention to them so that he may exercise his discretion². Where this has not been done, or where ornaments have been retained in spite of his objection, and the decree of consecration does not refer to them, the act of consecration of the church does not stamp them with his approval and they may, if adjudged to be improper, be removed by a decree of the ecclesiastical court³.

There are provisions for the disposal of the contents of a redundant church without the need for a faculty⁴.

1 *Westerton v Liddell, Horne etc* (1855) Moore's Special Report at 21, 22. As to the meaning of 'ornaments', see PARA 961 ante.

2 *Markham v Shirebrook Overseers* [1906] P 239.

3 *Markham v Shirebrook Overseers* [1906] P 239; *Davey v Hinde* [1901] P 95; *Beal v Liddell, Parke and Evans* (1855) Moore's Special Report at 82.

4 See the Pastoral Measure 1968, s 64, and PARA 1127 post.

UPDATE

1077 Ornaments not included in consecration

NOTE 4--Now Pastoral Measure 1983 s 64.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iii) Consecration of Churches and Churchyards/1078. Alterations in church or churchyard.

1078. Alterations in church or churchyard.

A faculty is in general necessary to sanction an alteration in a consecrated building or land and also in unconsecrated land which forms, or is part of, the curtilage of a church. The circumstances in which a faculty is required¹ and the mode of application for one² are dealt with subsequently.

1 See PARA 1306 et seq post.

2 See PARA 1322 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1079. Vesting of freehold of church and churchyard.

(iv) Ownership; Restrictions on Disposal and Use

1079. Vesting of freehold of church and churchyard.

Where a parish has no rector or the rector is himself the incumbent the freehold of the church and of the churchyard is, normally at least, in the incumbent¹. Where, however, there are both a rector and a vicar, in the case of an ancient church and churchyard, the freehold is in the rector², but in the case of a church or churchyard consecrated in modern times, by virtue of various statutory provisions, the freehold is normally in the incumbent as distinguished from the rector³. Where the rector is a layman the enjoyment of the property so far as it can be exercised by a layman belongs to him as owner of the freehold, but the incumbent has such possession as is necessary for the performance of his sacred duties⁴.

Where any church or churchyard in a parish was, on 1st April 1969⁵, vested in the incumbent of another parish as such, it thereupon vested in the incumbent of the parish in which the church or churchyard was situated⁶. Where fittings and decorations have been placed in and devoted to the use of the church of a parish they are under the control of the incumbent⁷, and the keys of the church belong to him⁸.

By virtue of his rights as freeholder the rector or incumbent in whom the freehold is vested may maintain an action for trespass, in case of an unauthorised interference with the churchyard⁹.

Whether the freehold is vested in the rector or in the incumbent it is held for the use of the parishioners¹⁰ for the purposes of their attending church services and of their burial in the churchyard¹¹, the management being vested on their behalf in the incumbent, the churchwardens and the parochial church council¹².

Where the freehold is vested in the incumbent he has only a life interest, the fee simple being in abeyance¹³; and during a vacancy in the benefice the fee simple remains in abeyance¹⁴. The parochial church council may, during a vacancy, take proceedings for the protection of the church and churchyard¹⁵.

A right of way for parishioners to reach a church is vested together with the church and churchyard¹⁵.

1 See *Jones v Ellis* (1828) 2 Y & J 265 at 273, and PARA 581 ante.

2 It is clear that, apart from statutory provisions, the freehold is prima facie in the 'parson': Com Dig, Esglise (G1); Degge, Parson's Counsellor (7th Edn) 230. The better opinion seems to be that, where there is a rector distinct from the incumbent, the freehold, in the absence of statutory provisions to the contrary, is in the former (see *Greenslade v Darby* (1868) LR 3 QB 421; *Walter v Mountague and Lamprell* (1836) 1 Curt 253 at 260, per Dr Lushington; *Griffin v Dighton* (1864) 5 B & S 93 at 103, Ex Ch, per Cockburn CJ); but there is some authority for the view that the freehold is in the incumbent, at least in the case of a vicar, and not in the rector (see Com Dig, Cemetery (A 2); *Vicar and One Churchwarden of St Botolph without Aldgate v Parishioners of St Botolph without Aldgate* [1892] P 161 at 167, per Dr Tristram). See also *Stewart v West Derby Burial Board* (1886) 34 ChD 314 at 333 (where Kay J referred to *Champneys v Arrowsmith* (1867) LT 3 CP 107 as an authority for the same view). Although in *Champneys v Arrowsmith* supra, the freehold was taken to be in the vicar, it did not appear whether there was a rector or not, and the point was not discussed, nor was the churchyard in fact an ancient churchyard; and later in *Batten v Gedy* (1889) 41 ChD 507, Kay J seems to have considered that the freehold of an ancient churchyard was or might be in the lay rector. It seems that when, by the sentence of consecration, the landowner renounces all right and title to the land, the freehold may thereupon become by operation of law vested in the parson (see *Campbell v Liverpool Corp* (1870) LR 9 Eq 579), but it is clear that

the freehold of consecrated ground can be in others eg in trustees (see the Burial Ground Act 1816, s 4). For the right of a rector in whom the freehold of a disused churchyard was vested to receive the income of money paid into court on the acquisition of the churchyard under compulsory powers, see *Ex parte Rector of Liverpool* (1870) LR 11 Eq 15; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 671, 675.

3 See PARA 1081 post.

4 *Winstanley v North Manchester Overseers* [1910] AC 7, HL.

5 le the date of commencement of the Pastoral Measure 1968: see the London Gazette, dated 7th February 1969.

6 Ibid s 76 (3).

7 *Redhead v Wait* (1862) 6 LT 580; *Harrison v Forbes and Sisson* (1860) 6 Jur NS 1353; *Lee v Matthews* (1830) 3 Hag Ecc 169 at 173; *Daunt v Crocker* (1867) LR 2 A & E 41. See, however, as to the ownership of movables para 553 ante, and, as to the responsibility for their care and maintenance para 582 ante. There can be no personal property in pews which are erected for the use of the inhabitants of the parish: *Hawkins and Coleman v Compeigne* (1818) 3 Phillim 11.

8 *Ritchings v Cordingley* (1868) LR 3 A & E 113. As to the churchwardens right of access, see PARA 553 ante.

9 *Jones v Ellis* (1828) 2 Y & J 265, where it was held that a perpetual curate had sufficient possession to bring trespass. As to perpetual curates today, see PARA 771 ante.

10 See *Griffin v Dighton* (1864) 5 B & S 93 at 103, Ex Ch, per Cockburn LJ.

11 As to parishioners' rights in a church, see PARA 562 ante. As to a parishioners' and non-parishioners' rights of burial, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1059 et seq.

12 *Fryer v Johnson* (1755) 2 Wils 28; Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c).

13 *Rector and Churchwardens of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95 at 101.

14 *Re St Paul's, Covent Garden* [1974] Fam 1.

15 *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No. 2)* [1973] 3 All ER 902, [1973] 1 WLR 1572; affd. [1975] 1 All ER 772, [1975] 1 WLR 468, CA.

UPDATE

1079 Vesting of freehold of church and churchyard

TEXT AND NOTE 6--Not included in Pastoral Measure 1983.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1080. Restrictions on disposal.

1080. Restrictions on disposal.

The incumbent cannot convey or create a legal estate or interest in a consecrated church or churchyard, as it is impossible to create a legal estate or interest in consecrated land without the authority of an Act or Measure¹. Only under the powers contained in the Pastoral Measure 1968² can a church or its site or consecrated land belonging to it be sold, let or otherwise disposed of³. This restriction on disposal does not prevent the grant of a faculty authorising a suitable use of part of a Church or the grant of a faculty in respect of any such land or affect any powers under any Act of Parliament⁴.

¹ *Vicar and Churchwardens of St Mary Abbots, Kensington v St Mary Abbots, Kensington Inhabitants* (1873) Trist 17; *Rector and Churchwardens of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95 at 101; *Re St Peter's, Bushey Heath* [1971] 2 All ER 704 at 706, [1971] 1 WLR 357 at 360.

² Ie the powers under the Pastoral Measure 1968, Part III (ss. 42-66) or s 30. See PARA 1074 ante, 1119 et seq post.

³ Ibid s 56 (2).

⁴ Ibid s 56 (3).

UPDATE

1080 Restrictions on disposal

NOTE 2--Now Pastoral Measure 1983 Pt III (ss 41-66) or s 30.

NOTES 3, 4--Now ibid s 56(2) (as amended), (3); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7 (see PARA 1074).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1081. Vesting of freeholds under modern enactments.

1081. Vesting of freeholds under modern enactments.

The freehold of the site of any church or burial ground, when consecrated, and of any house, garden, appurtenances or land for the residence or glebe of the person serving any church, conveyed to the Ecclesiastical Commissioners¹ under the Church Building Acts² vested in the incumbent of the church for the time being or, in the case of a burial ground, in the incumbent of the church to which the burial ground belonged³.

Where land was vested in the Church Commissioners on 13th April 1960⁴ for any of certain purposes mentioned in the New Parishes Measure 1943⁵, it vests on the consecration of the church or burial ground in the incumbent of the parish in which it is situated⁶. Special provisions apply where any land or building acquired after that date under the provisions of the New Parishes Measure 1943 enabling the commissioners to acquire land and certain bodies to give or grant land to the commissioners⁷ is (1) a church or part of a church or a building fit to be used as or to be converted into a church⁸; (2) land acquired as a site for a new church or for a church to be substituted for an existing church, or for enlarging the site of the existing church⁹; (3) land for providing a new or extending an existing churchyard or burial ground¹⁰; or (4) land required for providing access to or improving the amenities of any church, churchyard or burial ground¹¹. In these circumstances the land or building vests in the incumbent of the parish in which it is situated¹². If, however, the area in which it is situated is subsequently constituted a new parish under that Measure¹³ it thereupon vests in the incumbent of that new parish, unless the scheme constituting the parish otherwise provides¹⁴. Where any land or building so acquired is (a) land or a building for a house of residence¹⁵ for an incumbent or other ecclesiastical person, (b) land for an extension of such a house of residence, or (c) land required for providing access to or improving the amenities of any such house of residence, it vests in the incumbent of the parish in which it is situated¹⁶.

Where any land or building acquired for use as a church hall or as a church or other place of worship and a church hall¹⁷, or any part of any such land or building, is, with the consent of the diocesan authority¹⁸, designated in the conveyance as vesting in that authority, it vests in that authority accordingly¹⁹.

1 Church Building Commissioners (Transfer of Powers) Act 1856, s 1 (repealed). The powers and duties of the Ecclesiastical Commissioners have now been transferred to the Church Commissioners: Church Commissioners Measure 1947, ss 2, 18 (2): see PARA 362 ante.

2 Ie the Church Building Acts 1818 to 1884, which were mainly repealed by the New Parishes Measure 1943, s 32, Schedule. As to the effect of the Measure upon districts formed under the Church Building Acts, see the New Parishes Measure 1943, s 8 (repealed by the Pastoral Measure 1968, s 95, Sch. 9), and PARA 538 ante.

3 Church Building Act 1845, s 13 (repealed: see note 2 supra). Similar provisions were made as to new parishes created under the New Parishes Acts by the New Parishes Act 1856, s 10 (repealed by the New Parishes Measure 1943, s 32, Schedule), but the Measure applies to any new parish or district constituted before the Act was passed (ie before 4th February 1943) under the New Parishes Acts 1843 to 1884 as if it had been constituted under the corresponding provisions of the Measure: New Parishes Measure 1943, s 29 (4). The provisions in the New Parishes Measure 1943 for the constitution of new parishes and districts have been repealed by the Pastoral Measure 1968, Sch. 9.

4 Ie the date of the passing of the Church Property (Miscellaneous Provisions) Measure 1960.

5 Ie those mentioned in the New Parishes Measure 1943, s 13 (1) (a), (b) and (c): see PARA 1061 ante.

6 Church Property (Miscellaneous Provisions) Measure 1960, s 6 (1). The whole site probably vests even though only part has been consecrated: see *Plumstead District Board of Works v Ecclesiastical Comrs for England* [1891] 2 QB 361, DC.

7 le under the New Parishes Measure 1943, s 13 or s 14: see PARAS 1061, 1062 ante. For the meaning of 'land', see PARA 1061 note 3 ante.

8 Ibid s 16 (1) (a).

9 Ibid s 16 (1) (b).

10 Ibid s 16 (1) (c).

11 Ibid s 16 (1) (d).

12 Ibid s 16 (1); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). For the meaning of 'incumbent', see PARA 1061 note 7 ante.

13 The power to create new parishes was contained in the New Parishes Measure 1943, s 1, which has been repealed by the Pastoral Measure 1968, s 95, Sch. 9, as from 1st April 1969, and the creation of new parishes is thereafter governed by the provisions of that Measure: see PARA 864 ante.

14 New Parishes Measure 1943, s 16 (1) proviso; Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

15 For the meaning of 'house of residence', see PARA 1061 note 6 ante.

16 New Parishes Measure 1943, s 16 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). If the land or building was acquired for or for the purposes of the house of residence of the minister of a district constituted by a scheme under the New Parishes Measure 1943, s 1, or as an endowment of any such district, it vested in the minister of that district: s 16 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). If, however, in anticipation of the constitution of a parish or district under the New Parishes Measure 1943 it was acquired for or for the purposes of a house of residence of the incumbent of that parish, or the minister of that district, or as an endowment of any such parish or district, it vested in the Church Commissioners until the parish or district was constituted and thereupon vested in the incumbent or minister of the parish or district as the case may be: s 16 (2) proviso; Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). The power to create new parishes or districts has been replaced: see note 13 supra.

17 le under the New Parishes Measure 1943, s 13 (1) (bb); Church Property (Miscellaneous Provisions) Measure 1960, s 5: see PARA 1061 ante.

18 'Diocesan authority' means the diocesan board of finance or any existing or future body appointed by the diocesan synod to act as trustees of diocesan trust property: *ibid* s 28 (1); Synodical Government Measure 1969, s 4 (7).

19 New Parishes Measure 1943, s 16 (3); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). The parochial church council of the ecclesiastical district in which any land or building so designated is for the time being situated must keep the diocesan authority indemnified in respect of the matters referred to in the Parochial Church Councils (Powers) Measure 1956, s 6 (4) (see PARA 583 ante): New Parishes Measure 1943, s 16 (4); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

UPDATE

1081 Vesting of freeholds under modern enactments

NOTE 13--Now governed by Pastoral Measure 1983.

NOTE 14--Where at the passing of the Church of England (Miscellaneous Provisions) Measure 1992 any land or building is held by the Commissioners for any of the purposes in the 1943 Measure s 13(1)(a), (b) or (c) (being land or a building acquired for that purpose before the passing of the Church Property (Miscellaneous Provisions) Measure 1960), the land or building vests in the incumbent for the time being of the parish in which it is situated: 1943 Measure s 16(1A); 1992 Measure s 8(b)(i).

TEXT AND NOTES 15, 16--Reference to other ecclesiastical person repealed: Endowments and Glebe Measure 1976 s 41(1). In NOTE 16, omit line 2 onwards.

TEXT AND NOTES 17-19--Section 16(3) now relates to a building to be used as a place of worship (other than a church) or church hall or both as a church or other place of worship and as a church hall; land for the site of a building to be so used or for enlarging the site of an existing building so used; land required for providing access to or for improving the amenities of a building which is to be, or is, so used; a building or land for, or for the extension of, a house of residence for an ecclesiastical person other than an incumbent; or land required for providing access to or improving the amenities of such a house; or land required for providing vehicle parking space for use in connection with a church or other place of worship, or church hall: Endowments and Glebe Measure 1976 s 41(2); Church of England (Miscellaneous Provisions) Measure 1983 s 1(2); 1992 Measure s 8(b)(ii).

NOTE 18--Now in 1943 Measure s 16, 'diocesan authority' means the body which is for the time being authorised by the relevant diocesan synod to act as trustees of the trust property of the diocese or, if there is no such body, the diocesan board of finance: *ibid* s 16(5); Church of England (Miscellaneous Provisions) Measure 1983 s 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1082. Grants of freeholds of churches and chapels.

1082. Grants of freeholds of churches and chapels.

Persons in whom, in their own right or as trustees, the freehold of any church or chapel, consecrated or unconsecrated¹, and of the vaults in or under it is vested by any Act of Parliament, deed or instrument for an estate in perpetuity may by deed, to which the bishop of the diocese and the patrons must be included as parties², surrender the same without consideration to the Church Commissioners³.

1 If unconsecrated, the freehold of the church or chapel remains in the commissioners until consecration, and thereafter ipso facto becomes subject to the same laws as to all rights and property in it as the pews and sittings of ancient parish churches: New Parishes Acts and Church Building Acts Amendment Act 1869, s 6. As to pews, see PARA 1086 et seq post.

2 Ibid s 3.

3 Ibid s 6; Church Commissioners Measure 1947, s 18 (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1083. Herbage and timber in churchyards.

1083. Herbage and timber in churchyards.

The right to the herbage¹ and, subject to what is said subsequently, to the trees in the churchyard² is in the incumbent if the freehold is vested in him; and in the case of a vicarage the presumption from general practice and usage is that this right forms part of the vicar's endowment, even if the freehold is in the rector³.

Timber growing in any churchyard of a benefice⁴ must not be felled without the consent of the parsonages board⁵, unless the felling is necessary to avoid immediate danger⁶. If it appears to the board that timber growing in such a churchyard ought, as a matter of good management, to be felled, it may require the incumbent to fell it and, if he fails to do so, may itself do so and sell the timber⁷. The incumbent may make representations before the board exercises its power to fell the timber⁸. The consent of the patron⁹ or Ordinary is not necessary for any felling under these provisions¹⁰. The net proceeds of any such felling and any money recovered by the board in respect of wrongful felling¹¹ may be applied for the purpose of planting new trees and, subject thereto, must be paid to the parochial church council and applied for the maintenance of the fabric of any church maintainable by the council¹². Where the expense to the incumbent of felling trees exceeds the proceeds of it, the board may defray the amount of the excess¹³.

1 As to herbage in a churchyard generally, see *Opinions of the Legal Board* (5th Edn 1973) III/23, 24, and as to herbage in a closed churchyard, see III/32, 33.

2 As to timber on glebe, see PARA 1180 post. As to timber and trees in churchyards, see the *Opinions of the Legal Board* (5th Edn 1973) III/32, 33.

3 *Greenslade v Darby* (1868) LR 3 QB 421, and see *Cox v Ricraft* (1757) 2 Lee 373; Lyndwood 267, gloss on *De Communitate Ecclesiae*. In 2 Roll Abr 337, it is said that the right is in the vicar as between him and the rector; but *Bellamie v -* (1615) 1 Roll Rep 255, which is cited with reference to the proposition, appears only to show that the question is triable at law, and not in the ecclesiastical court (the case is cited on this point in 2 Roll Abr 311); see the note in *Gib Cod* 207, 208.

4 'Benefice' means the office of a rector or vicar of a parish or parishes, with cure of souls, but does not include the office of a vicar in a team ministry: *Repair of Benefice Buildings Measure 1972*, s 31 (1).

5 As to parsonages boards, see *ibid* s 1, and PARA 520 ante.

6 *Ibid* s 20 (1). Timber is not defined in the Measure.

7 *Ibid* s 20 (3). The board's workmen and agents have powers of entry under s 11 (see PARA 1177 post) for the purpose of felling and sale: s 20 (3). If timber is wrongfully felled the board may require the incumbent or his personal representative to pay the board the net value of the timber and may take proceedings to recover payment: s 20 (2). In any such proceedings the defendant may show that the timber had no net value or that the amount required is excessive: s 20 (2) proviso.

8 *Ibid* s 20 (4). The board's notice requiring the incumbent to fell timber must give him at least one month to make representations: s 20 (4). He may require to meet the board and the board may make inspections and take advice before deciding whether or not to proceed with the notice: ss 4 (5), 20 (4).

9 'Patron' has the meaning assigned by the *Pastoral Measure 1968* (see PARA 813 note 5 ante): *Repair of Benefice Buildings Measure 1972*, s 31 (1).

10 *Ibid* s 20 (5).

11 See *ibid* s 20 (2), and note 7 supra.

12 Ibid s 20 (6).

13 Ibid s 20 (7).

UPDATE

1083 Herbage and timber in churchyards

TEXT AND NOTES 6-8, 12--1972 Measure s 20(1), (3), (4), (6) repealed in so far as it relates to timber in churchyards: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 6(4). The powers, duties and liabilities of a parochial church council with respect to the care and maintenance of a churchyard which the council is liable to maintain now extend to the trees therein, including those proposed to be planted: *ibid* s 6(1); Church of England (Miscellaneous Provisions) Measure 1995 s 13. Where a tree in a churchyard which a parochial church council is liable to maintain is felled, lopped or topped the council may sell or otherwise dispose of the timber and the net proceeds of any sale must be paid to the council and applied for the maintenance of any church or churchyard which the council is liable to maintain: 1991 Measure s 6(2); 1995 Measure s 13. The chancellor of a diocese must, after consultation with the advisory committee, give written guidance to all parochial church councils in the diocese as to the planting, felling, lopping and topping of trees in churchyards: 1991 Measure s 6(3).

NOTE 9--1968 Measure now Pastoral Measure 1983.

NOTE 12--1972 Measure s 20(6) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 9.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1084. Parson as owner or occupier of churchyard.

1084. Parson as owner or occupier of churchyard.

The parson appears not to be 'owner' of the churchyard within the meaning of statutory definitions of 'owner', such as those applicable to the interpretation of the Public Health Acts to the effect that 'owner' means the person receiving the rackrent of the premises, or who would receive the rackrent if the premises were let at a rackrent¹.

An incumbent in whom the freehold is vested is the 'occupier' of the churchyard; and, if the occupation is of value by reason of his receiving a net income from fees in respect of exclusive rights of burial or rights of erecting monuments in the churchyard, and similar charges, he is rateable accordingly².

1 Public Health Act 1936, s 343 (1). See *Angell v Vestry of Paddington* (1868) LR 3 QB 714 (decided with reference to a church, and explained in *Wright v Ingle* (1885) 16 QBD 379, CA; *Caiger v Vestry of St Mary, Islington* (1881) 50 LJMC 59 (cases both of which were decided with reference to dissenting chapels); and see *R v Lee* (1878) 4 QBD 75 (which was also decided with reference to a church); *Plumstead District Board of Works v Ecclesiastical Comrs for England* [1891] 2 QB 361, DC. In *Folkestone Corp v Woodward* (1872) LR 15 Eq 159 a perpetual curate in whom the site of a church was vested by statute was held to be the owner for the purposes of a local Act. The parson's interest in the churchyard as freeholder was sufficient to satisfy the former ownership qualification as parliamentary elector: see *Beswick v Alker* (1872) LR 8 CP 265; *Vickers v Selwyn* (1903) 89 LT 747, DC; *Wolfe v Surrey County Council Clerk* [1905] 1 KB 439 (decided with reference to the parson's freehold in the church). For the qualifications of parliamentary and local government electors, see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 110 et seq.

2 *Winstanley v North Manchester Overseers* [1910] AC 7, HL. For a case where churchwardens were held rateable under the provisions of local Acts, see *Mills v Rydon* (1854) 10 Exch 67.

UPDATE

1084 Parson as owner or occupier of churchyard

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(iv) Ownership; Restrictions on Disposal and Use/1085. Property in monuments.

1085. Property in monuments.

A monument set up in a church or churchyard¹ remains the property of the person by whom it is set up during his life, and that person may accordingly sustain an action for trespass against anyone removing or defacing it²; in former times it has been said on high authority that after the death of the person setting it up, the monument became the property of the heir of the deceased in whose honour it was erected, and descended to the heirs of the latter, as being in the nature of an heirloom, and at any rate that such heirs might sustain an action if the monument be interfered with³; and, despite some conflict of opinion in modern times, it is thought that the legal position remains unchanged⁴.

1 See The Churchyards Handbook (CIO 1962). As to the liability of a monumental mason in negligence for damage to a third party caused by the faulty erection of a tombstone, see *Brown v Cotterill* (1934) 51 TLR 21.

2 *Lady De Wyche's Case* (1469) YB 9 Edw 4, fo 14, pl 8, as explained in *Corven's Case* (1612) 12 Co Rep 105; *Spooner v Brewster* (1825) 3 Bing 136.

3 See *Corven's Case* (1612) 12 Co Rep 105; 3 Co Inst 202; 1 Co Litt 18 b; *Frances v Ley* (1615) Cro Jac 366; *May v Gilbert* (1613) 2 Bulst 150; *Hitchcock v Walter* (1838) 6 Dowl 457.

4 It has been suggested that under modern law rights in a monument may pass to the persons entitled under the will or intestacy of the person who had set it up, but it is significant that the older view is adopted in the Faculty Jurisdiction Measure 1964, s 3 (4), where 'owner' is defined: see PARA 1316 note 13 post. Generally as to the devolution of property on death, see EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1086. Right to a pew.

(v) Pews

1086. Right to a pew.

A pew signifies an enclosed seat in a church¹. At common law there is no property in nor any right to sell or let a pew or seat in the body of a parochial church or chapel², but a right to use particular seats may have been acquired, as appurtenant to a particular messuage³, by faculty⁴ or prescription founded on a presumed faculty⁵, and where the seats in respect of which such a right has been acquired are enclosed they are called a pew.

The right thus established in a pew⁶ is essentially a right to use it during divine service and other religious observances at times when the church is open for use, subject to the regulations of the church, and there is no right of access to the pew or to use it for other purposes in any other manner⁷. Although the seats are permanently enclosed and affixed to the freehold the freehold of the land remains vested in the parson, and the ownership of the pew carries with it no more than an easement in the nature of an exclusive right to occupy during divine service and the times of other religious observances⁸. Where a rent is paid for a pew⁹ it is a profit arising from the use of the freehold and gives to the person paying it a right to have the use and occupation of a certain portion of the freehold for the purpose above defined¹⁰.

The right to a pew by prescription may be established whenever there is evidence of exclusive possession of the pew inconsistent with mere possession by permission¹¹ and so long continued that the grant of a faculty ought to be presumed, and, even where the first possession arose in a form which gave no legal title, a faculty may be presumed when it is consistent with the later long-continued user¹².

1 *Brumfitt v Roberts* (1870) LR 5 CP 224 at 232.

2 By the general law and of common right all pews belong to the parishioners at large for their use and accommodation: *Pettman v Bridger* (1811) 1 Phillim 316 at 323.

3 *Rogers v Brooks* (1783) 1 Term Rep 431n. If the messuage is divided the right to use the pew may be apportioned: *Harris v Drewe* (1831) 2 B & Ad 164. The messuage need not necessarily be within the parish (*Lousley v Hayward* (1827) 1 Y & J 583) but the pew must be appurtenant to a messuage (*Mainwaring v Giles* (1822) 5 B & Ald 356).

4 The grant by faculty of a seat in the body of a church to a person residing outside the parish is bad: *Fuller v Lane* (1825) 2 Add 419; *Byerley v Windus* (1826) 5 B & C 1. A faculty to a man and his heirs is bad: *Stocks v Booth* (1786) 1 Term Rep 428.

5 Where a question of prescription is raised it must be dealt with by the temporal courts (*Byerley v Windus* (1826) 5 B & C 1; *Knapp v Parishioners of St Mary, Willesden* (1851) 15 Jur 473), and where the house to which a pew was alleged to be appurtenant was being replaced by a new mansion house and the owner had applied for a faculty to annex the pew to the new house or alternatively that he might be allotted a pew, and the rector denied that any pew was appurtenant by prescription to the old house, a prohibition was granted to prevent the question of prescription being tried in the consistory court: *R v Tristram* (1909) Times, 24th April, 17th June. See *Hallack v Cambridge University* (1841) 1 Gal & Dav 100. A prescriptive right to a pew ceases when the person enjoying it ceases to be a parishioner: *Fuller v Lane* (1825) 2 Add 419 at 427. The claimant must show some act of user or assertion of proprietary right inconsistent with mere possession by permission of churchwardens: *Stileman-Gibbard v Wilkinson* [1896] 1 QB 749.

6 A pew in an aisle or chancel which legally may belong to a person, whether a parishioner or not (*Fuller v Lane* (1825) 2 Add 419 at 427), in respect of the ownership of a house, or may belong to a lay rector, differs from a pew in the body of the church, which can only be acquired by virtue of a faculty or by prescription

founded on a presumed faculty (*Parker v Leach* (1866) LR 1 PC 312 at 327; *Mainwaring v Giles* (1822) 5 B & Ald 356). A grant of a portion of the chancel by a rector to a man and his heirs is bad: *Clifford v Wicks* (1818) 1 B & Ald 498.

7 *Hinde v Chorlton* (1866) LR 2 CP 104 at 115; *Brumfitt v Roberts* (1870) LR 5 CP 224.

8 *Hinde v Chorlton* (1866) LR 2 CP 104; *Brumfitt v Roberts* (1870) LR 5 CP 224; *Greenway v Hockin* (1870) LR 5 CP 235.

9 As to pew rents, see PARA 1092 post.

10 *Re Leveson, ex parte Arrowsmith* (1878) 8 ChD 96, CA.

11 Mere occupancy is not sufficient: *Crisp v Martin* (1876) 2 PD 15.

12 *Phillips v Halliday* [1891] AC 228, HL; and see *Griffith v Matthews* (1793) 5 Term Rep 296; and *Morgan v Curtis* (1829) 3 Man & Ry KB 389.

UPDATE

1086 Right to a pew

TEXT AND NOTES 7, 8--*Brumfitt v Roberts*, cited, applied in *Re St Mary's, Banbury* [1987] 1 All ER 247.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1087. Repairs to pews.

1087. Repairs to pews.

A right to a pew involves the burden of repairing it¹; and the carrying out of repairs by a claimant or by his predecessors in title without leave from the churchwardens, which would be illegal in the absence of any title, affords strong grounds for presuming the grant of a faculty², but it is not essential to prove acts of repair where evidence is given of other acts of user which are inconsistent with possession by mere permission³.

1 *Crisp v Martin* (1876) 2 PD 15; *Churton v Frewen* (1866) LR 2 Eq 634. Where three pews adjoining each other are used under one claim in respect of one messuage, repair done to one is evidence as to all: *Pepper v Barnard* (1843) 12 LJB 361.

2 *Kenrick v Taylor* (1752) 1 Wils 326; *Halliday v Phillips* (1889) 23 QBD 48, CA; affd. sub nom. *Phillips v Halliday* [1891] AC 228, HL.

3 Eg locking the pew and keeping the key (*Phillips v Halliday* [1891] AC 228, HL), or removing the woodwork and substituting chairs for the former seats (*Stileman-Gibbard v Wilkinson* [1896] 1 QB 749); but relining a pew is not inconsistent with possession by mere permission (*Stileman-Gibbard v Wilkinson* supra at 760).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1088. Control of seating in church.

1088. Control of seating in church.

Where there is no prescription the churchwardens on behalf of the Ordinary¹, and subject to his direction, may order the placing of parishioners in any public consecrated church or chapel², including a cathedral which is also a parish church³, and neither the minister nor the parochial church council⁴ has any right to interfere with them in so doing, although they may reasonably defer to the minister's advice and the council's wishes. Their duty is to provide, in such manner as the service of God may be best celebrated⁵, to the best advantage for the accommodation of all parishioners⁶, so that as far as practicable everyone may have a seat, and the allotment must be in general terms giving the allottees the right to occupy the seats allotted at all ordinary services if they are claimed before the commencement of the service⁷. The allotment gives a possessory right against a disturber⁸ though not against the Ordinary or churchwardens⁹, but if they find it necessary to dispossess anyone of a seat which he has enjoyed for a time they must give him notice before doing so¹⁰.

1 As to the Ordinary's duties concerning seating, see *Corven's Case* (1612) 12 Co Rep 105, and see the Revised Canons Ecclesiastical, Canon F 7 para 2, and PARA 555 ante.

2 3 Co Inst 202; *Reynolds v Monkton* (1841) 2 Mood & R 384; *Proud v Price* (1893) 63 LJQB 61, CA; and see *Battiscombe v Eve* (1863) 9 Jur NS 210; Revised Canons Ecclesiastical, Canon F 7 para 2: see PARA 555 ante.

3 *Re Londonderry Cathedral Church Pews* (1863) 8 LT 861.

4 Any powers and duties of the vestry in this behalf are now exercised by the parochial church council: see the Parochial Church Councils (Powers) Measure 1956, s 4 (1) (i).

5 Revised Canons Ecclesiastical, Canon F 7 para 2.

6 *Groves and Wright v Rector etc of Hornsey* (1793) 1 Hag Con 188; *Walter v Gunner and Drury* (1798) 1 Hag Con 314.

7 *Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195.

8 *Kenrick v Taylor* (1752) 1 Wils 326; *Cross v Salter* (1790) 3 Term Rep 639.

9 *Pettman v Bridger* (1811) 1 Phillim 316.

10 *Horsfall v Holland and Wooley* (1859) 6 Jur NS 278.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1089. Re-allotment of seats.

1089. Re-allotment of seats.

Where under a faculty churches are enlarged, restored or repaired, it has been usual to re-allot seats in the church where there has been a large number of faculty seats in the church or seats allotted by the churchwardens to houses in the parish, or where the funds for the alterations have been mainly subscribed by parishioners who desire to have faculty pews annexed to their houses, and this re-allotment has usually been confirmed by faculty¹; but in view of the increase in the population to be accommodated, such faculties will only be granted with the greatest prudence². Where the allocation is made by the churchwardens and not confirmed by faculty, it gives no legal right to the allottees to claim the seats allotted as faculty seats or pews³ unless there is evidence from which the Ordinary's consent may be inferred⁴.

1 *Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195.

2 *Fuller v Lane* (1825) 2 Add 419 at 425. See *Earl Bathurst v Cirencester Parish* [1921] P 381.

3 *Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195.

4 *Vicar etc of Claverley v Parishioners etc of Claverley* [1909] P 195 at 203.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1090. Allotment of seats under former enactments.

1090. Allotment of seats under former enactments.

The Ecclesiastical Commissioners¹ had power under the Church Building Acts 1818 to 1884, in connection with the formation of new ecclesiastical districts, to allot one seat or pew for the use of the minister and his family, and one for the use of his servants, and after setting apart not less than one-fifth of the whole of the seating as free seats² could provide that the rest of the seats should be chargeable with specified rents³.

¹ See as successors to the Church Building Commissioners: Church Building Commissioners (Transfer of Powers) Act 1856, s 1 (repealed).

² Church Building Act 1818, s 75 (repealed).

³ Ibid s 77 (repealed). Most of the provisions of the Church Building Acts, including all provisions of the Church Building Act 1818, were repealed by the New Parishes Measure 1943, s 32, Schedule (repealed), and after the passing of that Measure it was not possible to constitute any district under the old enactments. When a new parish was constituted pursuant to a scheme under the New Parishes Measure 1943, s 1, a claim to seating in the church of the new parish operated as a surrender of former rights: s 4 (6). These provisions have been repealed by the Pastoral Measure 1968, s 95, Sch. 9, and schemes for new parishes under the New Parishes Act 1943 can no longer be made. Under the New Parishes Measure 1943, s 22, the Church Commissioners were empowered to substitute a new church for a parish church and, inter alia, to secure rights to seating in the new church corresponding with those in the old church: s 22 (2) (f). The provisions of s 22 have also been repealed by the Pastoral Measure 1968, Sch. 9.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1091. Surrender of pews or seats.

1091. Surrender of pews or seats.

Any pews or seats in any church or chapel, consecrated or unconsecrated, which are in the disposal of or are the property of any persons by virtue of any Act of Parliament, deed or instrument, whether subject to any trust or not, may be surrendered to the bishop of the diocese or the Church Commissioners, with or without consideration for such surrender, by the persons having the disposal of or the property in them¹, by deed executed by them, by the bishop of the diocese and by the patrons of the church or chapel, and registered in the diocesan registry².

After the surrender, the pews or seats are subject to the same laws as to their rights and property as the pews and seats of ancient parish churches³.

1 New Parishes Acts and Church Building Acts Amendment Act 1869, s 2; Church Commissioners Measure 1947, s 18 (2).

2 New Parishes Acts and Church Building Acts Amendment Act 1869, s 3. For a form of such a surrender, see Forms and Precedents.

3 New Parishes Acts and Church Building Acts Amendment Act 1869, s 5. If a church or chapel is unconsecrated the pew or seat surrendered belongs to the bishop or the commissioners until consecration of the church or chapel: s 5 proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1092. Pew rents.

1092. Pew rents.

There is no right at common law to let or sell any seat or pew in a church¹, but express power was in many cases given by statute to the Ecclesiastical Commissioners (now the Church Commissioners)² or other bodies or persons to fix a scale of payment to be received for seats or pews in certain churches and chapels in order to provide funds for repaying the expense of building or for maintaining the ministrations of the church in that connection. The commissioners could fix a scale of pew rents to be charged in any church or chapel in aid of the building of which they had made a grant either in a district parish³ or in a consolidated⁴ or district chapelry, or with the bishop's consent if sufficient funds could not be provided from other sources in parochial districts or new parishes formed after July 1856⁵.

In cases where there were pew rents in districts and parishes formed under the Church Building Act 1818 to 1884 and the New Parishes Acts 1843 to 1884 the existing rights to charge or recover rents for seats in churches or any scale fixing those rents are not affected by the repeal of the bulk of these Acts⁶.

The commissioners, in the exercise of their functions, may accept a church site by a grant or conveyance which declares that the pews or seats in the church erected or to be erected there, or a proportion of them, are not to be let for payment of money; and such pews or seats must not be so let⁷.

1 See PARA 1086 ante.

2 Church Commissioners Measure 1947, ss 2, 18 (2).

3 Church Building Act 1818, s 63 (repealed).

4 Church Building Act 1819, ss 6, 15 (repealed); Church Building Act 1845 (repealed).

5 New Parishes Act 1856, s 6. This provision and those cited in notes 3, 4 supra, were repealed by the New Parishes Measure 1943, s 32, Schedule, subject to rights existing at 4th February 1943: see note 6 infra.

6 Ibid s 32 (1) (c), Schedule. No provision was made for taking pew rents in the case of districts and parishes formed since 4th February 1943 under the New Parishes Measure 1943. The powers of forming new parishes under that Measure were repealed by the Pastoral Measure 1968, s 95, Sch. 9. No provision is made for taking pew rents in the case of parishes created by pastoral schemes under the Pastoral Measure 1968.

7 Church Seats Act 1872, s 2. In such a case the commissioners must secure an endowment or stipend of at least £100 per annum to the incumbent, or, if only a proportion of the pews or seats cannot be let, a proportion of that sum: s 3.

UPDATE

1092 Pew rents

NOTE 7--Section 3 repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1093. Payment of pew rents.

1093. Payment of pew rents.

Where pew rents are still payable they are payable in advance¹, and in case of non-payment of such rents of any pew or seat the parochial church council² of the church or chapel may enter upon and sell them, or may bring an action for the rents³.

1 Church Building Act 1819, s 32; New Parishes Measure 1943, s 32 (1) (c).

2 The powers of the churchwardens relating to pew rents are now vested in the parochial church council: see the Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (a).

3 Church Building Act 1818, s 73; Church Building Act 1831, s 16; New Parishes Measure 1943, s 32 (1) (c).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1094. Application of surplus.

1094. Application of surplus.

The Church Commissioners¹, with the bishop's consent, may apply part or the whole of any surplus pew rents, still payable, which are not invested to form a fund for building or providing a residence, to augment the minister's stipend², and may declare that any pew rents fixed by them shall cease in the whole or part of a church or chapel where the pew rents have not been assigned or appropriated under any local Act, if a permanent endowment has been provided in lieu of such pew rents which is satisfactory to them and the bishop, and thereafter the seats are at the disposal of the parochial church council³, as in a parish church⁴, or they may with similar consent, where a permanent endowment is provided and the pew rents are not appropriated by law for any specific purpose, either make a reduction in the scale of charges or declare certain seats to be free⁵.

1 See the Church Building Commissioners (Transfer of Powers) Act 1856, s 1; Church Commissioners Measure 1947, ss 2, 18 (2).

2 Church Building Act 1840, s 5; New Parishes Measure 1943, s 32 (1).

3 See PARA 1093 note 2 ante.

4 Church Building Act 1851, s 1; New Parishes Measure 1943, s 32 (1).

5 New Parishes Act 1856, s 7; New Parishes Measure 1943, s 32 (1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(v) Pews/1095. Payment of stipend out of pew rents.

1095. Payment of stipend out of pew rents.

The Church Commissioners¹, with the bishop's consent², may assign a stipend to the minister or clerk of a church built under the Church Building Acts to be paid out of the pew rents where still payable³, or may assign the pew rents to the parish or district, in which case the parochial church council⁴ must pay over the pew rents assigned to the stipend and actually received, as soon as they are received, in payment of the stipend accrued due⁵. Surplus pew rents above such stipend are to be accumulated to form a fund to be used for the purchase, with the consent of the bishop, of a house of residence, and after the completion of such purpose for the augmentation of the stipend or the reduction of the pew rents or the increase of the accommodation as directed by the bishop, or, if the commissioners think fit, are to be chargeable with money raised for the purpose of building or repairing a church or chapel, or purchasing a site for it⁶.

1 Church Building Commissioners (Transfer of Powers) Act 1856, s 1; Church Commissioners Measure 1947, ss 2, 18 (2).

2 In case of difference between the commissioners and the bishop the amount is to be settled by the archbishop: Church Building Act 1818, s 64; New Parishes Measure 1943, s 32 (1).

3 See PARA 1092 ante.

4 See PARA 1093 note 2 ante.

5 Church Building Act 1818, s 64; Church Building Act 1819, s 26; New Parishes Measure 1943, s 32 (1); *Lloyd v Burrup* (1868) LR 4 Exch 63.

6 Church Building Act 1819, ss 26, 27; New Parishes Measure 1943, s 32 (1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1096. Division of responsibility for repairs.

(vi) Repairs and Maintenance

1096. Division of responsibility for repairs.

By the canon law the rector of a parish was responsible for the repair of the whole church¹, but by the common custom of England, as opposed to the rest of Christendom, the liability was divided, it resting on the parishioners to repair the body of the church², and on the rector, whether spiritual or lay, to repair the chancel³.

1 *Ball v Cross* (1688) 1 Salk 164.

2 As to private aisles, see PARA 1107 post.

3 *Pense v Prouse* (1695) 1 Ld Raym 59. The view has been expressed that the rector's obligation to repair the chancel was imposed by the common law, not the canon law: see *Representative Body of the Church in Wales v Tithe Redemption Commission* [1944] AC 228 at 240, 245, [1944] 1 All ER 710 at 713, 715, HL. As to chancel repairs, see further PARA 1100 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1097. Parochial church council's duties.

1097. Parochial church council's duties.

It is the duty of the parochial church council¹ to take care that the churches and chapels in the parish are decently kept and are well and sufficiently repaired, and that all things in them are maintained in an orderly and decent fashion²; and that the churchyards are duly fenced³ and kept in an orderly and decent manner⁴.

The parochial church council of any parish may levy a voluntary church rate⁵ for any purpose connected with the affairs of the church⁶, which would include its repair. The council is only liable for the repair of the church to the extent of the funds which it has in its hands⁷, but has a duty to arrange for inspection of the church when called upon so to do by the archdeacon⁸.

1 The parochial church council has the former powers and duties of the churchwardens with respect to the care and maintenance of the fabric of the church, its goods and ornaments and the churchyard: Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii). The council is the responsible authority to enforce the liability of the rector or lay impropriator to repair the chancel: see PARA 1106 post. The council's duty under s 4 (1) (i) extends to rights appurtenant to the church and churchyard, including rights of way: *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No. 2)* [1973] 3 All ER 902, [1973] 1 WLR 1572; affd. [1975] 1 All ER 772, [1975] 1 WLR 468, CA.

2 Revised Canons Ecclesiastical, Canon F13 paras 1; Canon F14.

3 The fences must be maintained at the charge of those to whom by law or custom the liability belongs: *ibid* Canon F13 para 2. See also PARA 1109 post.

4 *Ibid* Canon F13 para 2; Canon F14. See also PARA 1109 post.

5 Formerly the parishioners' obligation was enforced by means of a compulsory church rate, but now no proceedings can be taken to enforce such a rate except in certain cases: Compulsory Church Rate Abolition Act 1868. As to church rates, see PARA 586 ante.

6 Parochial Church Councils (Powers) Measure 1956, s 7 (ii). It seems that the power to borrow on the security of surplus per rents, which was granted by the Church Building Act 1819, s 27, has disappeared by virtue of the repeal of that section by the New Parishes Measure 1943, s 32, Schedule (repealed), notwithstanding the saving in s 32 (1) (c).

7 *Northwaite v Bennett* (1834) 2 Cr & M 316; *Millar and Simes v Palmer and Killby* (1837) 1 Curt 540 at 554, 555; *Veley v Pertwee* (1870) LR 5 QB 573: see the Compulsory Church Rate Abolition Act 1868.

8 See PARA 1099 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1098. Powers and duties of diocesan officers and bodies.

1098. Powers and duties of diocesan officers and bodies.

The archdeacon, with the approval of the diocesan advisory committee¹, and on the application of the incumbent and churchwardens, supported by a resolution of the parochial church council, may authorise by certificate the execution of church repairs not involving substantial alteration or church redecoration, without a faculty².

It is the duty of every archdeacon to survey in person or by deputy the churches, chancels and churchyards within his jurisdiction and give directions for the amendment of all defects in their walls, fabric, ornaments and furniture³.

1 See the Faculty Jurisdiction Measure 1964, s 13, and PARAS 1321, 1331 et seq post.

2 Ibid s 12: see PARA 1331 post.

3 Revised Canons Ecclesiastical, Canon C22 para 5. The archdeacon has further duties with regard to the inspection of churches: see PARA 1099 post.

UPDATE

1098 Powers and duties of diocesan officers and bodies

NOTE 1--1964 Measure s 13 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 2(8). As to diocesan advisory committees see now 1991 Measure s 2, Schs 1, 2 and PARA 523.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1099. Inspection of churches.

1099. Inspection of churches.

The diocesan conference (now the diocesan synod)¹ of every diocese in the provinces of Canterbury and York, except the Channel Islands and the Isle of Man² was required to establish within three years after 29th March 1955³ a scheme to provide for the inspection of every church in the diocese at least once in every five years⁴. The diocesan synod may at any time or times establish a further scheme taking the place of any prior scheme⁵. Every scheme must provide for the establishment of a fund by means of contributions, for the payment out of the fund of the cost of inspection of churches, for the appointment of an architect or architects to inspect and report on the churches in the diocese, and for a copy of each report to be sent to the archdeacon of the archdeaconry and the parochial church council of the parish in which the church to which it relates is situate, and may contain such other provisions as the diocesan synod thinks fit⁶. Any scheme made and passed at a meeting of the diocesan synod must be signed by the chairman of the meeting and comes into operation on the date on which it is signed⁷.

Where the archdeacon of any archdeaconry finds at a survey of the churches of his jurisdiction⁸ or at any other time that a church in his archdeaconry has not been inspected to his satisfaction by an architect for at least five years he may serve on the parochial church council or, if there is no parochial church council, on the churchwardens⁹ concerned, a notice in writing¹⁰ requiring the church to be inspected in accordance with the diocesan scheme¹¹. At any time after the expiration of three months from the date of service of the notice the archdeacon may, with the bishop's consent, himself make arrangements for inspection and report if the church has not been inspected in the meantime¹².

1 See the Synodical Government Measure 1969, s 4, and PARA 503 ante.

2 See the Inspection of Churches Measure 1955, s 7 (1).

3 See the date of the passing of the Inspection of Churches Measure 1955.

4 Ibid s 1 (1); Synodical Government Measure 1969, s 4 (7).

5 Inspection of Churches Measure 1955, s 1 (3); Synodical Government Measure 1969, s 4 (7).

6 Inspection of Churches Measure 1955, s 1 (2); Synodical Government Measure 1969, s 4 (7).

7 Inspection of Churches Measure 1955, s 1 (4); Synodical Government Measure 1969, s 4 (7).

8 See PARA 1098 ante.

9 See the Inspection of Churches Measure 1955, s 4 (1). A certificate by the bishop stating that at any specified time a particular parish in his diocese had no parochial church council is conclusive: s 4 (2).

10 The notice may be served by registered post or recorded delivery service addressed to the secretary of the parochial church council by name at his residence, or by the title of his office at the incumbent's residence; in the case of the churchwardens it may be so sent addressed to any two of them at their residences: ibid s 5; Recorded Delivery Service Act 1962, ss 1 (1), 2 (1) (b).

11 Inspection of Churches Measure 1955, s 2 (1).

12 Ibid s 2 (2). Where a church has been inspected pursuant to a notice or to arrangements made by the archdeacon, the cost of inspection is to be paid out of the fund established by the diocesan scheme: s 3.

UPDATE**1099 Inspection of churches**

TEXT AND NOTES--An inspection must now extend to (i) any movable article in the church which is (a) of outstanding architectural, artistic, historical or archaeological value; (b) of significant monetary value; or (c) at special risk of being stolen or damaged; (ii) any ruin in the churchyard which is for the time being designated as being of outstanding architectural, artistic, historical or archaeological value; (iii) any tree in the churchyard belonging to the church in respect of which a tree preservation order is for the time being in force: 1955 Measure s 1A; Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 3. Any expenses properly incurred by a parochial church council, with the prior written approval of the diocesan board of finance, for the purposes of implementing a recommendation contained in a report on a ruin must be paid by the board: 1991 Measure s 7. Where, for any diocese to which the 1955 Measure applies, a scheme for inspection has not been made it is the duty of the bishop of the diocese to establish a scheme: 1955 Measure s 1B; 1991 Measure Sch 3.

Any person or body carrying out functions of care and conservation must have due regard to the role of a church as a local centre of worship and mission: 1991 Measure s 1.

TEXT AND NOTE 6--1955 Measure s 1(2) further amended to provide for the appointment of a qualified person instead of an architect and for the sending of a copy of that person's report to the parochial church council in which the church is situated, to the incumbent of the benefice comprising that parish and to the secretary of the advisory committee of the diocese: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 3. 'Qualified person' means a person registered under the Architects Registration Acts 1931 to 1969 or a member of the Royal Institution of Chartered Surveyors qualified as a chartered building surveyor: 1955 Measure s 6; 1991 Measure Sch 3.

TEXT AND NOTE 11--1955 Measure s 2(1) amended to refer to a qualified person instead of an architect: 1991 Measure Sch 3. As to the definition of 'qualified person' see TEXT AND NOTE 6. Any reference to a church in s 2 includes a reference to any movable article in a church of (i) outstanding architectural, artistic, historic or archaeological value; or (ii) of significant monetary value; or (iii) at special risk of being stolen or damaged: 1955 Measure s 2(3); 1991 Measure Sch 3.

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1100. Repair of chancel.

At common law¹ the repair of the chancel of an ancient parish church was the obligation of the rector of the parish², whether spiritual or lay, in the absence of custom to the contrary³, and a lay impropiator in receipt of the rents and profits of a rectory was liable for repair even where at the time he purchased the land forming part of the rectory he had no notice of the liability⁴. Where the parson was bound to repair the chancel and there was a rector and a vicar, the vicar and rector contributed in proportion to their respective benefices⁵.

The liability was to keep the chancel in good and substantial repair, restoring and rebuilding where necessary, but did not extend to anything in the nature of ornament or, save for the purpose of preservation, to decoration⁶. It is considered that the liability extended to the chancel screen. When the parson repaired the chancel he was thereby discharged from contributing to the repair of the nave⁷.

This common law liability still remains in the case of a number of parishes, but in many others it has been abolished or seriously affected by statute⁸.

The liability to maintain the chancel passes with the rectorial property on its transfer⁹. A purchaser of land to which the liability attaches cannot recover damages from his vendor under the vendor's covenants for title⁹.

The liability of a lay impropiator to pay the costs of repair is personal and several and not joint, and is not limited to the profits of the rectorial property received by him¹⁰ but, on payment of the cost of the repairs, he is entitled to obtain contributions from persons subject to the same liability to repair¹¹.

1 See *Representative Body of the Church in Wales v Tithe Redemption Commission* [1944] AC 228 at 240, 245, [1944] 1 All ER 710 at 713, 715, HL. As to the responsibility according to the canon law, see PARA 1096 ante.

2 The obligation is based upon the maxim that he who has profits of the benefice should bear the burden of repair: *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585, [1955] 2 All ER 607.

3 Lyndwood 53, gloss on Reparatione; 253 gloss on Ad quos pertinent, where it is stated that the custom for the parishioners to repair the chancel is acknowledged in many of the churches in the City of London; cf. *Bishop of Ely v Gibbons and Goody* (1833) 4 Hag Ecc 156, for a similar custom at Clare in Suffolk; *Pense v Prouse* (1695) 1 Ld Raym 59.

4 *Hauxton Parochial Church Council v Stevens* [1929] P 240; *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585, [1955] 2 All ER 607.

5 Lyndwood, 253, gloss on Et Vicariis.

6 Lyndwood, Constitutions of Othobon, tit. 17, gloss on Indiguerint (Oxford 1679) 112; *Wise v Metcalfe* (1829) 10 B & C 299 at 316, per Bailey J; *Pell v Addison* (1860) 2 F & F 291 at 292, per Willes J.

7 *Smallbones v Edney* (1870) LR 3 PC 444 at 450.

8 See PARA 1101 post. As to the limitation of liability where the chancel has suffered war damage, see PARA 1104 post.

9 *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585, [1955] 2 All ER 607.

10 *Wickhambrook Parochial Church Council v Croxford* [1935] 2 KB 417, CA. This decision has not escaped criticism (see an article by C. V. Davidge in 51 LQR 583), although it was accepted in *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585 at 594, [1955] 2 All ER 607 at 609. Where the impropiator's liability is derived from a former ownership of tithe rentcharge it may be limited to a proportionate amount of the cost of repairs: see PARA 1103 post.

11 *Wickhambrook Parochial Church Council v Croxford* [1935] 2 KB 417, CA.

UPDATE

1100 Repair of chancel

TEXT AND NOTES--The liability to repair arising from the ownership immediately before 1 April 1978 of glebe land or other property forming part of the endowments and held by or in trust for the incumbent, or arising from the ownership of any tithe rentcharge which was extinguished by the Tithe Act 1936 and immediately before 2 October 1936 was held by Queen Anne's Bounty in trust for the incumbent, has been transferred to the parochial church council: Endowments and Glebe Measure 1976 s 39; Order of the Church Commissioners dated 11 August 1977.

As to the liability of a lay rector to pay the costs of repairs, see *Aston Cantlow and Wilmcote with Billesley Parochial Church, v Wallbank* [2003] UKHL 37, [2003] 3 All ER 1213.

NOTES 6, 7--The requirement is to put the chancel into substantial repair, without ornament, and not merely to ensure that it is wind and watertight: *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley v Wallbank* [2007] All ER (D) 50 (Feb).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1101. Cesser or composition of liability to repair chancel.

1101. Cesser or composition of liability to repair chancel.

An incumbent who by reason only of his incumbency is rector of a parish, or would otherwise be solely liable for the repair or insurance of the chancel of the parish church, has ceased to be liable, and the chancel is repairable and insurable in the same manner as the rest of the church¹. This rule applies only where the incumbent was solely liable; where the rectorial property was vested as to a part in the spiritual rector and as to the remainder in a lay impropriator the spiritual rector is not relieved of his liability².

Any person other than such an incumbent, who is liable as rector or otherwise for the repair of a chancel, after consultation with the parochial church council and with the approval of the parsonages board³, may compound his liability by payment to the diocesan board of finance of such a sum as, having regard to the condition of the chancel⁴, the board of finance may deem sufficient to provide for the cost of future repairs of the chancel and for a capital sum the income of which will be sufficient to insure the chancel against fire up to the cost of reinstatement⁵. The question of the sum to be paid is referred to the Church Commissioners for decision if the parochial church council or the parsonages board so requires⁶. On payment of the sum determined and all expenses incurred, the person compounding receives a receipt and thereafter his liability ceases, the chancel being henceforth repairable in the same manner as the rest of the church⁷. Any sum contributed by an incumbent who is by reason only of his incumbency a person compounding liability under these provisions may be advanced to him by the commissioners by way of charge on the revenues of the benefice⁸.

The sum received to compound liability must be invested in investments permitted by law for the investment of trust funds and the income applied in insuring the chancel or in payment of charges lawfully incurred in the maintenance and repair of the rest of the church or churchyard, the balance being accumulated to form a fund for the extraordinary repair, improvement or enlargement of the church or churchyard which is, however, available for use as income if required⁹. The board of finance has power, however, at the request of the parochial church council and with the consent of the commissioners, to apply any part of the capital of the sum paid for compounding the liability which in the board's opinion represented at the date of its receipt¹⁰ the cost or part of the cost of immediate repairs to the chancel, in or towards the cost of such repairs, but in no case can the fund be reduced below a sum the income of which will be sufficient to provide for insuring the chancel and, with any other money likely to be available for that purpose, to provide for the cost of future repairs¹¹.

1 Ecclesiastical Dilapidations Measure 1923, s 52 (1). Funds applicable generally to church repairs but not trust funds limited in their application to the body of the church (excluding the chancel), are available for repair of the chancel: Opinions of the Legal Board (5th Edn 1973) III/16, 17.

2 Recent Opinions on Church Law 1947, p. 43, Opinion 47.

3 The parsonages board exercises the functions previously exercised by the diocesan dilapidations board, which it replaces: see the Repair of Benefice Buildings Measure 1972, ss 1, 29; and PARA 520 ante.

4 By reason of the reference to the condition of the chancel in the Ecclesiastical Dilapidations Measure 1923, s 52 (2), the board of finance requires a sum equal to the cost of doing such repairs as are immediately necessary to be included in the sum required for the compounding of the liability.

5 Ibid s 52 (2); Ecclesiastical Dilapidations (Amendment) Measure 1929, s 18; Repair of Benefice Buildings Measure 1972, s 29.

6 Ecclesiastical Dilapidations Measure 1923, ss 3, 52 (3); Church Commissioners Measure 1947, s 18 (2); Repair of Benefice Buildings Measure 1972, s 29.

7 Ecclesiastical Dilapidations Measure 1923, s 52 (4).

8 Ibid s 52 (6); Church Commissioners Measure 1947, s 18 (2).

9 Ecclesiastical Dilapidations Measure 1923, s 52 (5).

10 Ie the date on which the fund was transferred to the diocesan authority, or in the case of a fund the transfer of which is deferred on payment of interest in the meantime the date from which the first payment of interest is calculated: Ecclesiastical Dilapidations (Chancel Repairs) Measure 1940, s 2.

11 Ibid s 1; Church Commissioners Measure 1947, s 18 (2).

UPDATE

1101 Cesser or composition of liability to repair chancel

TEXT AND NOTE 8--Repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 10, 11--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1102. Chancel repairs and tithe rentcharge.

1102. Chancel repairs and tithe rentcharge.

During the century before 1936 the most common form of rectorial property was the rentcharge created by statute¹. In some cases the tithe rentcharge had been merged² in the land out of which it issued, and in some cases it had been redeemed³. The better view was that in cases of merger the owner of the land in which the tithe rentcharge had been merged was liable for chancel repairs and that in cases of redemption the owner of the land was not so liable; this division of liability is now statutory⁴. There were also cases where the tithe rentcharge and the land out of which it issued were in common ownership although there had been no formal act of merger: in these cases the owner of the unmerged tithe rentcharge naturally remained liable for chancel repairs.

On 2nd October 1936 all tithe rentcharge created in 1836⁵ was extinguished⁶, and redemption stock was issued for the compensation of those interested in the extinguished tithe rentcharge⁷. Where there had been merger the landowner's liability was unaffected⁸. Where immediately before that date a tithe rentcharge and the land out of which it issued were vested in the same person and had been so vested on 26th February 1936⁹ and during the intervening period, the rentcharge was extinguished but no redemption stock was issued¹⁰, and the landowner became liable for chancel repairs, his liability being the same as it would have been if there had been merger¹¹.

1 See the Tithe Act 1836.

2 Ie under the Tithe Act 1839, s 1.

3 Ie under the Tithe Act 1846.

4 Tithe Act 1936: see s 31, Sch. 7, Part I paras 1 (b) (redemption), 2 (b) (merger). There were, however, many who took the view that in cases of merger the landowner was not liable for chancel repairs: see Millard's Tithes (3rd Edn) 148.

5 See the Tithe Act 1836.

6 Tithe Act 1936, s 1; see PARAS 1212, 1213 post.

7 See PARA 1215 post.

8 Tithe Act 1936, s 31 (4).

9 Ie the day before the publication of the government's proposals which were embodied in the Tithe Act 1936.

10 Ibid s 21 (1).

11 Ibid s 31 (3).

UPDATE

1102 Chancel repairs and tithe rentcharge

NOTES 1, 5--1836 Act largely repealed: Statute Law (Repeals) Act 1998.

NOTES 6, 10--1936 Act ss 1, 21 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1103. Financial provision for repairs.

1103. Financial provision for repairs.

Where the owner of a tithe rentcharge which was extinguished had been liable for chancel repairs and was entitled to receive redemption stock in compensation for it, a part of the redemption stock, in effect representing the capital value of his liability, was, save in the excepted cases mentioned later, diverted from him and paid to the diocesan board of finance¹. The diverted part was to be equal in amount to such a sum as might be reasonably sufficient, having regard to the condition of the chancel on 2nd October 1936, to provide for the cost of future repairs and to provide a capital sum the income of which would be sufficient to insure the chancel for a sum adequate to reinstate it in the event of destruction by fire². The stock issued to the diocesan board of finance is held and disposed of for the purposes and in the manner for and in which an investment of a sum paid in compounding a liability for repairs is to be held and disposed of under the Ecclesiastical Dilapidations Measures 1923 to 1951³.

The excepted cases referred to above are where the rentcharge giving rise to the liability was vested in Queen Anne's Bounty immediately before 2nd October 1936⁴, the Ecclesiastical Commissioners⁴, a spiritual rector of a rectory with cure of souls, an ecclesiastical corporation⁵, or certain universities or colleges⁶: in these excepted cases there was no diversion of a part of the redemption stock to the diocesan board of finance and the corporation or body remains subject to liability to repair as if the rentcharge had continued in existence and in the ownership of the corporation or body⁷.

Where liability attached to two or more rentcharges, provision is made for the apportionment of the liability⁸.

1 Tithe Act 1936, s 31 (2). There were modifications of this provision as regards Wales: see s 31 (8), Sch. 7, Part III; and see PARA 326 ante.

2 Ibid s 31 (2).

3 Ibid Sch. 7, Part II para 5. The Ecclesiastical Dilapidations Measures 1923 to 1951 are now substantially repealed: see PARA 1164 post.

4 These two bodies were dissolved and replaced by the Church Commissioners on 1st April 1948: Church Commissioners Measure 1947, ss 1, 2.

5 'Ecclesiastical corporation' is defined in the Tithe Act 1936, s 47 (1), by reference to the definition in the Episcopal and Capitular Estates Act 1851 which (see s 11 (repealed)) includes every archbishop, bishop, dean and chapter, dean, archdeacon, canon, prebendary and other dignitary or officer of any cathedral or collegiate church in England and Wales and every minor ecclesiastical corporation in any such cathedral or collegiate church, but does not include the dean and canons of the cathedral church of Christ in Oxford, or any college or hospital or any parson, vicar or perpetual curate or other incumbent of any benefice.

6 I.e. one to which the Universities and College Estates Act 1925, applies, namely, the Universities of Oxford, Cambridge and Durham, the colleges or halls there and Winchester and Eton Colleges: s 1.

7 Tithe Act 1936, s 31 (2) proviso.

8 See ibid Sch. 7, Part I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1104. Effect of war damage on liability to repair.

1104. Effect of war damage on liability to repair.

A liability to repair a chancel of a church or to repair any other ecclesiastical building arising in any way except under contract expressly providing for the execution of war damage repairs or from the holding of property on trusts which authorise its application in the execution of those repairs does not extend to any repairs required for making good war damage¹. Where war damage occurs and the discharge of any liability to execute repairs, other than war damage repairs, is, by reason of the extent of the war damage, either impracticable or only practicable at unreasonable cost, or of no substantial advantage, the liability is suspended until such war damage repairs have been done as to make its discharge practicable at reasonable cost and of substantial advantage², and during any period of suspension all rights and remedies arising out of non-discharge of the liability are modified or suspended accordingly³.

1 War Damage Act 1943, s 119 (1), (6).

2 Ibid s 119 (2).

3 Ibid s 119 (3). As to proceedings to enforce liabilities to repair, see PARA 1106 post. In exercising its powers as to payments under s 69 (4), the Commissioners of Inland Revenue are to have regard to the circumstances affecting as a whole the church of which the chancel forms part or the premises of which the other ecclesiastical building to which the liability to repair relates forms part: s 119 (5); War Damage Act 1964, s 2.

UPDATE

1104 Effect of war damage on liability to repair

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 1981.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1105. Inclosure Acts.

1105. Inclosure Acts.

In addition to the instances mentioned already, the common law liability still subsists where the rectorial property consists of lands or corn rents allotted in lieu of tithe under an inclosure award made pursuant to some local Inclosure or other Act, of which about 2,230 were passed in the seventeenth and eighteenth centuries¹.

¹ Cf. *Hauxton Parochial Church Council v Stevens* [1929] P 240; *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585, [1955] 2 All ER 607.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1106. Proceedings to enforce liability to repair chancel.

1106. Proceedings to enforce liability to repair chancel.

The liability to repair a chancel is enforceable in the county court for the district in which the chancel is situated¹.

If the chancel of any church of or belonging to a benefice² is in need of repair, the responsible authority³ may serve on any person who appears to it to be liable to repair the chancel a notice to repair⁴, stating the grounds of liability alleged and the extent of the disrepair, and calling on him to put the chancel in proper repair⁵. After the expiration of one month from the service of the notice⁶, the authority may bring proceedings in the county court⁷ against the person on whom notice was served to recover the sum necessary to repair the chancel⁸ and the court may give judgment for the authority for the sum which in the court's opinion is necessary to repair the chancel⁹.

1 Chancel Repairs Act 1932, s 3 (1). The county court has jurisdiction whatever the amount claimed: s 3 (1). The liability was formerly enforceable in the ecclesiastical courts, but this jurisdiction was abolished by s 1.

2 Ibid s 4 (1). By s 4 (2) 'church' and 'benefice' have the meanings assigned by the Interpretation Measure 1925, s 3: see PARA 302 note 2 ante, 768 note 1 ante.

3 'Responsible authority' means the parochial church council, or where there is no such council the incumbent and churchwardens: Chancel Repairs Act 1932, s 4 (1).

4 For the form of the notice, see CCR Ord. 45, r 1, App. A, Form 361, and Court Forms. It is served in accordance with CCR Ord. 8, r 39: Ord. 45, r 1.

5 Chancel Repairs Act 1932, s 2 (1).

6 If on the authority's application the court is satisfied that the matter is urgent it may allow it to take proceedings before the expiration of the month: ibid s 2 (2) proviso. The application is made in accordance with CCR Ord. 13, r 1: Ord. 45, r 3. For a form of application for leave, see Court Forms.

7 Proceedings are by action: CCR Ord. 45, r 2. For a form of particulars of claim, see Court Forms. No appeal lies from the county court where the claim does not exceed £20, without leave of the judge (Chancel Repairs Act 1932, s 3 (3)), but a claim may be transferred to the High Court (s. 3 (2)). Cf. *Chivers & Sons Ltd v Secretary of State for Air* [1955] Ch 585, [1955] 2 All ER 607. The parochial church council acts by its secretary and the incumbent and churchwardens act by the incumbent: CCR Ord. 45, r 4. Security for costs may be ordered: see Ord. 45, r 5.

8 Chancel Repairs Act 1932, s 2 (2).

9 Ibid s 2 (3). If the defendant has always been willing to repair the chancel, but has not had sufficient time, the court may adjourn the proceedings to enable him to do so, and if he does so it must give judgment for him: s 2 (3) proviso. If judgment is given for a sum for repairs not yet executed that sum must, unless the judge otherwise directs, be paid into court to be dealt with as he directs: CCR Ord. 45, r 6 (1). This does not, however, prejudice any solicitor's lien for costs: Ord. 45, r 6 (2). Unless the responsible authority has repaired the chancel it cannot recover the cost of repairs already done: see *Opinions of the Legal Board* (5th Edn 1973) III/17.

UPDATE

1106 Proceedings to enforce liability to repair chancel

TEXT AND NOTES--CCR replaced by CCR 1981, further replaced by the Civil Procedure Rules 1998, SI 1998/3132. See generally CIVIL PROCEDURE. As to the procedure

applicable to claims under the Chancel Repairs Act 1932, see now CPR 56.4; *Practice Direction--Landlord and Tenant Claims and Miscellaneous Provisions about Land* PD 56 para 12.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1107. Repair of private aisle.

1107. Repair of private aisle.

Any person having a house within the parish may be liable for the repair of an aisle of the church as having been built for the proper use of those whose estate he has in the house¹, and where the chancel is in fact a chapel coeval with the church which has been and is held and used exclusively as appendant to some estate, the person entitled to its exclusive use will be liable for its repair notwithstanding that the freehold is not in him².

1 3 Co Inst 202; see *Williams v Bond* (1690) 2 Vent 238.

2 See *Churton v Frewen* (1866) LR 2 Eq 634.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1108. Remedies for unauthorised interference with churchyard.

1108. Remedies for unauthorised interference with churchyard.

An unauthorised interference with the churchyard, whether on the part of the rector or incumbent or others, is an offence against ecclesiastical law¹; and in a proper case a civil court will grant an injunction to restrain an interference with the churchyard that would constitute an offence against ecclesiastical law². Such an injunction will be granted at the instance of the parochial church council³ but, in view of the remedies available in the ecclesiastical court, not at the instance of a parishioner⁴. The parochial church council may sue for the protection of the churchyard and rights appurtenant to it including rights of way⁵.

1 See *Bennett v Bonaker* (1830) 3 Hag Ecc 17; *Burgoyne v Free* (1829) 2 Hag Ecc 456; *Walter v Mountague and Lamprell* (1836) 1 Curt 253 (a case of forming a footpath across a churchyard and making a new gate to it); *Marriott v Tarpley* (1838) 9 Sim 279; *Batten v Gedye* (1889) 41 ChD 507; and see also the cases cited as to monuments and vaults in PARA 1085 ante.

2 *Marriott v Tarpley* (1838) 9 Sim 279.

3 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c); *Marriott v Tarpley* (1838) 9 Sim 279; *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No. 2)* [1973] 3 All ER 902, [1973] 1 WLR 1572; affd. [1975] 1 All ER 772, [1975] 1 WLR 468, CA.

4 *Batten v Gedye* (1889) 41 ChD 507.

5 See the Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c); and *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No. 2)* [1973] 3 All ER 902, [1973] 1 WLR 1572; affd. [1975] 1 All ER 772, [1975] 1 WLR 468, CA.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vi) Repairs and Maintenance/1109. Maintenance of churchyard.

1109. Maintenance of churchyard.

In a particular parish, by immemorial usage, the incumbent or the owner of particular land might be bound to maintain the churchyard and its fences; such a duty was, it seems, enforceable by action or, if the liability was not denied, by proceedings in the ecclesiastical court¹.

In general, however, it was the duty of the churchwardens to see that the churchyard and its fences were kept in proper repair, a duty which was enforceable at law so long as the payment of church rates, upon which the burden of repair fell, was compulsory². The duty has now been transferred to the parochial church council³. Since the abolition of compulsory church rates the council's duty is limited to effecting repairs out of such funds as may be available for the purpose from voluntary church rates or subscriptions, and has ceased to be a legal obligation⁴.

1 See *Claydon v Churchwardens of Duncombe* (1638) 2 Roll Abr 287 pl 52, where on a denial of the liability a prohibition went to restrain proceedings in the ecclesiastical court against a landowner alleged to be liable to repair the churchyard; see also *R v Reynell* (1805) 6 East 315. See also PARA 1197 ante.

2 In 2 Co Inst 489 it is said that the parishioners ought to repair the enclosure of the churchyard, a statement which may be taken to mean that it was their duty to contribute through the church rate to the expense. See the Revised Canons Ecclesiastical, Canon F 13 para 2, and PARA 1097 ante. See also *Walter v Mountague and Lamprell* (1836) 1 Curt 253 at 260, per Dr Lushington.

3 Parochial Church Councils (Powers) Measure 1956, s 4 (1) (ii) (c).

4 The abolition of compulsory church rates was effected by the Compulsory Church Rate Abolition Act 1868, the effect of which (except in certain cases which were specially provided for) is to make the payment of church rates voluntary. As to the maintenance of closed churchyards, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1141 et seq. In *Re Haigh with Aspull New Parish* [1919] P 143 (a case of a new parish) the diocesan chancellor ordered that a portion of the burial fees should be allotted to a fund for the maintenance and extension of the parish churchyard.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vii) Disposal of Surplus Land/1110. Disposal of surplus land acquired under the New Parishes Measure 1943.

(vii) Disposal of Surplus Land

1110. Disposal of surplus land acquired under the New Parishes Measure 1943.

The owner¹ of any land² or building which before or after 13th April 1960 was or is acquired by the Ecclesiastical Commissioners, Queen Anne's Bounty, the Church Building Commissioners or the Church Commissioners³, whether for valuable consideration or by way of gift, for any of certain purposes mentioned in the New Parishes Measure 1943⁴ may (1) sell that land or building or any part of it⁵; (2) exchange it or any part of it for any other land or building more suitable for the purpose for which it was acquired and receive or pay money by way of equality of exchange⁶; (3) appropriate it or transfer it or any part of it to or for any ecclesiastical purpose for the benefit of the ecclesiastical district⁷ in which it is situated, or for any educational, charitable or public purpose relating to that district⁸; or (4) where it was acquired by way of gift, reconvey it or any part of it to the grantor or his successors in title without consideration⁹. Where the land or building is vested in the Church Commissioners the consent of the incumbent¹⁰, if any, and the bishop¹¹ is required¹², and where it is vested in an incumbent the consent of the commissioners and the bishop or, during a vacancy in the benefice, that of the commissioners, is required¹³. No person may give his consent unless satisfied that the land or building, or the part concerned, is no longer required for the purpose for which it was acquired¹⁴. The proceeds of sale of any land or building sold under these provisions must be paid to the commissioners and applied to such purposes, being purposes for the benefit of the benefice of the ecclesiastical district in which the land or building is situate or charitable purposes relating to that district, as may be agreed between the commissioners and the bishop after consulting with the owner¹⁵.

Where the land or building was acquired for valuable consideration before 13th April 1960 and has been held for less than twenty years the owner must, before offering it for sale, offer to resell it to the person from whom it was acquired at such price as failing agreement may be determined by arbitration¹⁶. If the person to whom it is offered refuses the offer or does not accept it within six weeks after it is made the right of preemption ceases and a statutory declaration made by any officer of the commissioners authorised by them that the offer has been refused or not accepted within that time is sufficient evidence of the facts stated¹⁷.

Nothing in the foregoing provisions authorises the sale or disposal of any consecrated land or affects the jurisdiction of the consistory court¹⁸. These powers do not restrict or limit the powers of sale or disposal conferred by certain other Measures and Acts¹⁹.

1 'Owner' means (1) the Church Commissioners, if the land or building is vested in them; (2) the incumbent, if it is vested in the incumbent (defined in PARA 1061 note 7 ante) for the time being; or (3) during a vacancy occurring after it has vested in the incumbent, the bishop: New Parishes Measure 1943, s 17 (7); Church Property (miscellaneous Provisions) Measure 1960, s 6 (2). In relation to any church, parish, district or other area or place 'bishop' means the bishop of the diocese in which the church etc. is situated, or if the parish etc. is situated partly in one diocese and partly in another, the bishop of each such diocese: New Parishes Measure 1943, s 29 (1).

2 For the meaning of 'land', see PARA 1061 note 3 ante.

3 The Church Commissioners have succeeded to the powers and duties of the Ecclesiastical Commissioners, Queen Anne's Bounty and the Church Building Commissioners: Church Building Commissioners (Transfer of Powers) Act 1856 (repealed); Church Commissioners Measure 1947, ss 1, 2.

4 le those mentioned in the New Parishes Measure 1943, s 13 (1) (a), (b), (bb), (c); Church Property (Miscellaneous Provisions) Measure 1960, s 5: see PARAS 1061, 1062 ante.

5 New Parishes Measure 1943, s 17 (1) (a); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

6 New Parishes Measure 1943, s 17 (1) (b); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

7 For the meaning of 'ecclesiastical district', see the New Parishes Measure 1943, s 29 (1), and PARA 1055 note 3 ante.

8 Ibid s 17 (1) (c); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). Where the land or building was acquired by way of gift or for a nominal consideration it must not be so appropriated or transferred without the consent of the grantor or his successors in title: New Parishes Measure 1943, s 17 (3); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). No such consent is necessary where land is appropriated or transferred for the widening of a highway or where the Church Commissioners are satisfied that it is not reasonably practicable to apply for consent, and a certificate to that effect sealed by the commissioners is sufficient evidence of that fact: New Parishes Measure 1943, s 17 (3) proviso; Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

9 New Parishes Measure 1943, s 17 (1) (d); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

10 For the meaning of 'incumbent', see PARA 1061 note 7 ante.

11 For the meaning of 'bishop', see note 1 supra. The bishop may delegate his functions in case of illness or absence: Pastoral Measure 1968, s 85.

12 New Parishes Measure 1943, s 17 (1) proviso (i); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

13 New Parishes Measure 1943, s 17 (1) proviso (ii); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

14 New Parishes Measure 1943, s 17 (1) proviso; Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

15 New Parishes Measure 1943, s 17 (4); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). As to what amounts to consultation, see *Rollo v Minister of Town and Country Planning* [1948] 1 All ER 13, CA; *Re Union of Whippingham and East Cowes, St James Benefices, Derham v Church Comrs for England* [1954] AC 245, [1954] 2 All ER 22, PC; *Parochial Church Council of St Martin, Lincoln v Church Comrs* (1968) Times, 13th November, PC; *Elphick v Church Comrs* [1974] AC 562, PC. If the surplus land is taken by the local authority under statutory powers the commissioners' power of appropriation extends to the compensation money: *Ex parte LCC, ex parte Vicar of Christ Church, East Greenwich* [1896] 1 Ch 520.

16 New Parishes Measure 1943, s 17 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). Subject to certain exceptions the Arbitration Act 1950, Part I (ss. 1-34), applies to the arbitration: see s 31.

17 New Parishes Measure 1943, s 17 (2) proviso; Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2).

18 New Parishes Measure 1943, s 17 (5); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). For the restrictions upon the disposal of consecrated land, see PARA 1080 ante. As to faculty jurisdiction, see PARA 1306 et seq post.

19 New Parishes Measure 1943, s 17 (6); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2). The powers saved by this provision are those contained in the Union of Benefices Measures 1923 to 1952 (all repealed); the Parsonages Measure 1938 and 1947 (see PARA 1162 post); and the Ecclesiastical Leasings Acts (see PARA 1158 post).

UPDATE

1110 Disposal of surplus land acquired under the New Parishes Measure 1943

TEXT AND NOTES 1-9--The land or building may also be transferred to the diocesan board of finance to be held as part of the diocesan glebe land: 1943 Measure s 17(1) (cc); Endowments and Glebe Measure 1976 s 18(4).

TEXT AND NOTE 4--The Church of England (Miscellaneous Provisions) Measure 1978 s 7 extends the powers of sale, exchange, transfer and reconveyance to land acquired under the New Parishes Measure 1943 s 13(1)(e). Purposes mentioned in the 1943 Measure s 13(1)(e), (f) also included: 1943 Measure s 17(1); 1978 Measure s 7; Church of England (Miscellaneous Provisions) Measure 1992 s 8(c).

NOTE 8--Section 17(3) also applies to transfer under s 17(1) (cc): 1976 Measure s 18(5).

NOTE 11--Pastoral Measure 1968 s 85 repealed: Church of England (Miscellaneous Provisions) Measure 1976 Schedule Part II. As to delegation of bishop's functions, see now Church of England (Miscellaneous Provisions) Measure 1983 (see PARA 473).

TEXT AND NOTES 16, 17--1943 Measure s 17(2) repealed: Statute Law (Repeals) Act 2004.

NOTE 16--1950 Act Pt I (ss 1-34) repealed by Arbitration Act 1996 Sch 4 and substantially replaced by 1996 Act. 1950 Act s 31 replaced: 1996 Act s 94, which applies Pt I (ss 1-84) to statutory arbitrations, including an arbitration pursuant to the 1943 Measure.

NOTE 19--Section 17(6) now refers only to the Parsonages Measures 1938 to 1947: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(vii) Disposal of Surplus Land/1111. Disposal of surplus land acquired under other enactments.

1111. Disposal of surplus land acquired under other enactments.

The person in whom any land granted under the Gifts for Churches Act 1803¹, the Gifts for Churches Act 1811², or the Consecration of Churchyards Act 1867³ is vested may exercise over it any of the powers referred to previously⁴ as exercisable, over land acquired by the Church Commissioners or their predecessors⁵. The consent of the bishop⁶ is required, but he must not give his consent unless satisfied that the land, or the part of it concerned, has not at any time been used, and is not likely to be used, for the purpose for which it was granted⁷. Where the land has been held by virtue of a grant by way of gift under the Acts mentioned above for less than twenty years the person in whom it is vested must first offer to reconvey it to the grantor without consideration⁸. If he refuses the offer or does not accept it within six weeks after it is made, or if the bishop makes a statutory declaration that the grantor cannot be found, the land may be disposed of as above⁹. Nothing in this provision authorises the sale or disposal of consecrated land or affects the jurisdiction of the consistory court¹⁰.

1 The Gifts for Churches Act 1803, ss 1-3, have been repealed by the Charities Act 1960, s 48 (2), Sch. 7, Part II; see PARAS 1057, 1060 ante.

2 See PARAS 1057-1059 ante.

3 See CREMATION AND BURIAL vol 10 (Reissue) PARAS 1007, 1066-1067. Land granted under the Consecration of Churchyards Act 1867 may be sold under this provision notwithstanding the reservation by the grantor of a right of burial under s 9: Church Property (Miscellaneous Provisions) Measure 1960, s 7 (4).

4 See under the New Parishes Measure 1943, s 17 (1) (a)-(d); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (2): see PARA 1110 ante.

5 Ibid s 7 (1). As to the commissioners' predecessors, see PARA 1110 text and note 3 ante. Where land is sold under this provision the proceeds must be paid to the Church Commissioners, who must apply them to such purposes, being purposes for the benefit of the benefice of the ecclesiastical district in which the land is situate or charitable purposes relating to that district, as may be agreed between them and the bishop after consulting with the person by whom the land was sold: s 7 (3). As to what amounts to consultation, cf. para 1110 note 15 ante.

6 'Bishop' means the bishop of the diocese in which the benefice is situated: ibid s 28 (1).

7 Ibid s 7 (1) proviso. The consent of the bishop must be by writing under his hand: s 25 (1). During a vacancy of a see his powers and duties may be exercised and discharged by the guardian of the spiritualities of the see: s 26. As to this guardian, see PARA 489 ante.

8 Ibid s 7 (2).

9 Ibid s 7 (2) proviso.

10 Ibid s 7 (5). As to the restrictions upon the disposal of consecrated land, see PARA 1080 ante. As to faculty jurisdiction, see PARA 1306 et seq post.

UPDATE

1111 Disposal of surplus land acquired under other enactments

TEXT AND NOTES--During a vacancy in a benefice any powers under 1960 Measure s 7 which, but for the vacancy, would have been exercisable by the incumbent will be

exercisable by the bishop: 1960 Measure s 7(6); Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 9.

NOTE 5--Proceeds of sale must now be paid to the parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1)) and the agreement as to the application of the proceeds must now be between the board and the bishop: 1960 Measure s 7(3) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 2.

TEXT AND NOTE 7--For the words 'has not at any time been used, and is not likely to be used, for the purpose for which it was granted' now read 'is no longer required for the purpose for which it was granted': Church of England (Miscellaneous Provisions) Measure 2006 s 5.

NOTE 7--Church Property (Miscellaneous Provisions) Measure 1960 s 26 repealed: Church of England (Miscellaneous Provisions) Measure 1976 Schedule Pt II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1112. Keeping of registers.

(viii) Registers

1112. Keeping of registers.

Registers of public and private baptisms and of burials solemnised in England according to the rites of the Church of England must, from 31st December 1812, be kept in separate books of parchment or durable paper by the rector, vicar, curate or officiating minister of every parish or of any chapelry, cathedral or collegiate church, chapel of a college or hospital or burying ground belonging to it, where the ceremonies have been usually (and may according to law be) performed¹. The books² must be provided initially³ by Her Majesty's printer at the expense of the parish, or in a non-parochial place at the expense of the body having the right to appoint the officiating minister for the purpose⁴.

Marriage register books are to be supplied by the Registrar General⁵ to the rector, vicar or curate in charge of every church or chapel where marriages may be solemnised according to the rites of the Church of England⁶.

1 Parochial Registers Act 1812, ss 1, 3, 20; Births and Deaths Registration Act 1836, s 1 (repealed). See also the Revised Canons Ecclesiastical, Canon F 11 paras 1, 2, and PARAS 995, 1041 ante. As to the registration of baptisms solemnised elsewhere than in a parish church, see PARA 996 ante; as to registration of burials, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1109 et seq. On a church becoming a guild church (see PARA 597 et seq ante), its registers and records are to be delivered to the vicar and churchwardens and be kept by them and remain in their power and custody: City of London (Guild Churches) Act 1952, s 24. This is subject to the provisions of ss 22 (4), (5), 23 (2), (3).

2 Detailed provisions are made as to the form of the books and of the entries to be made in them: see the Parochial Registers Act 1812, ss 1-3, Schs. (A), (C); Births and Deaths Registration Act 1836, s 1 (repealed). In accordance with the Parochial Registers Act 1812, s 3, entries must be made as soon as possible after the ceremonies: see PARA 995 ante. As to the entry in respect of an adopted person, see the Adoption Act 1958, s 25; Adoption Act 1964, s 1 (2) (a). As to a subsequent annotation where a person baptised is subsequently legitimated, see the Baptismal Registers Measure 1961, s 1, Schedule, Part I.

3 Subsequently they are obtained as required by the churchwardens: Parochial Registers Act 1812, s 2.

4 Ibid ss 1, 20.

5 As to the Registrar General for England and Wales, formerly called the Registrar General of Births, Deaths and Marriages, see the Registration Service Act 1953, s 1, and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 504.

6 Marriage Act 1949, s 54. As to the registration of marriages and the custody of marriage registers, see PARA 1034 et seq ante. The Parochial Registers Act 1812 was repealed as regards the registration of marriages by the Births and Deaths Registration Act 1836, s 1 (repealed).

UPDATE

1112 Keeping of registers

TEXT AND NOTES--The 1812 Act has been consolidated in the Parochial Registers and Records Measure 1978.

TEXT--As to the keeping of a register of patrons of every benefice in a diocese, see the Patronage (Benefices) Measure 1986 s 1, Sch 1 (see PARA 783A).

NOTE 1--1964 Act s 1(2), repealed: Children Act 1975 Sch 4.

NOTE 2--1958 Act s 25; 1964 Act s 1(2) (a) repealed: Children Act 1975 Sch 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1113. Care of registers.

1113. Care of registers.

The registers are deemed to belong to the parish and must be preserved by the minister in a locked iron chest in a dry and secure place in his house of residence if he is resident in the parish, or in the parish church¹. The registers must not be removed from the chest except for the purpose of making entries and for inspection by persons making searches or copies, or for their production as evidence in court, or other lawful purposes².

¹ Parochial Registers Act 1812, s 5. These provisions are, however, subject to directions which the bishop may give under the Parochial Registers and Records Measure 1929, s 1: see PARA 1117 post.

² Parochial Registers Act 1812, s 5. Thereafter the books must be deposited in the chest forthwith: s 5. See however note 1 supra.

UPDATE

1113 Care of registers

TEXT AND NOTES--1812 Act consolidated: Parochial Registers and Records Measure 1978. The registers and records must be of durable material: *ibid* s 1; they must be set out in the prescribed manner: Sch 1. If they are liable to be delivered to a diocesan record office, see PARA 1117, but are retained in the parish under the authorisation of the bishop as provided by s 11, they must be kept in a wood-lined, rust-proofed, vented steel cabinet fitted with a multi-lever lock or in a fire-proofed muniment room conforming to specified standards. The temperature and humidity inside the cabinet or muniment room must be kept within specified limits: Sch 2; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 12. If the bishop decides the requirements for care of the registers and records are not being complied with, he may withdraw the authorisation for them to be kept in any place: s 12.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1114.
Transmission of copies of registers.

1114. Transmission of copies of registers.

Copies of the registers must be made annually by or under the direction of the minister of the parish and must be verified and signed by him in a specified manner and attested by the churchwardens or one of them¹. These copies must be transmitted² by the churchwardens on or before 1st June in every year to the registrar of the diocese³. The registrar must record and file the copies in safe custody⁴.

1 Parochial Registers Act 1812, s 6. Copies are not subject to stamp duty: s 17.

2 Baptismal register books of guild churches must also be transmitted to the diocesan registry: City of London (Guild Churches) Act 1952, s 23 (3).

3 Parochial Registers Act 1812, s 7. The registrar must report to the bishop on or before 1st July each year whether the returns have been sent to him (s. 8), and if a minister refuses to verify or sign the copies the churchwardens must certify the default to the registrar who must include this statement in his report to the bishop (s. 9). The packet containing the copies which is transmitted to the registrar must be indorsed in the manner specified by Sch. (E): s 11.

4 Ibid s 12.

UPDATE

1114 Transmission of copies of registers

TEXT AND NOTES--1812 Act consolidated; see PARA 1112. These provisions have been changed by the 1978 Measure, see PARA 1117.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1115.
Searches and certified copies.

1115. Searches and certified copies.

Every rector, vicar or curate must at all reasonable times allow searches to be made of any register book in his keeping and must give a copy certified under his hand of any entry or entries¹. There are prescribed fees for searches and certificates².

When registers have been deposited in a diocesan record office³ or with a diocesan registrar, searches are to be permitted and certified copies given by the chief officer or diocesan registrar on payment of the same fees as are payable to a minister⁴, the minister being entitled to receive half the fees in certain circumstances⁵.

1 Births and Deaths Registration Act 1836, s 35; Births and Deaths Registration Act 1953, s 43 (2), Sch. 2. In respect of a baptism, a short certificate must be given if requested: Baptismal Registers Measure 1961, s 2. As to the form, see s 2 (1), Schedule, Part II.

2 The fees are now prescribed by order made by the Church Commissioners; see the Ecclesiastical Fees Measure 1962, ss 2, 8 (1), Schedule, Part I. The current fees are as follows: certificate of baptism or burial, 50p; short certificate of baptism (see note 1 *supra*), 25p; searching register of baptisms or burials for first year, 30p; and for every year after the first year, 15p: Parochial Fees Order 1972, S.I. 1972 No. 177, Schedule, Part I. As to searches of marriage registers, see PARA 1038 *ante*.

3 See PARA 1117 *post*.

4 Parochial Registers and Records Measure 1929, s 11 (1), (2). This Measure applies also to the registers of a guild church: City of London (Guild Churches) Act 1952, s 25.

5 Parochial Registers and Records Measure 1929, s 11 (3).

UPDATE

1115 Searches and certified copies

NOTE 1--1836 Act s 35 repealed: Parochial Registers and Records Measure 1978; see *ibid* s 20; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 9; Church of England (Miscellaneous Provisions) Measure 1995 s 10 and CREMATION AND BURIAL vol 10 (Reissue) PARA 1113 for current provisions.

NOTE 2--For current fees, see now PARA 1198.

NOTES 4, 5--1929 Measure consolidated: Parochial Registers and Records Measure 1978. For current provisions relating to searches of material in diocesan record office, see *ibid* ss 16-18.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1116. Penalties.

1116. Penalties.

Penalties are prescribed for unlawfully destroying, defacing or injuring any register or forging or fraudulently altering any entry in it or any certified copy of such entry, or for knowingly and unlawfully inserting any false entry in a register or in any certified copy¹.

A minister, however, incurs no penalty if he discovers an error in the form or substance of the entry in the register of any baptism or burial solemnised by him and within one calendar month after the discovery corrects the erroneous entry according to the truth of the case by entry in the margin, without any alteration or obliteration of the original entry, and signs the marginal entry, adding the date of the correction, in the presence of the parent or parents of the child baptised or of two persons who attended the burial or, in case of their death or absence, in the presence of the churchwardens or chapelwardens, who must attest the correction and signature².

1 See the Forgery Act 1861, s 36; Forgery Act 1913, s 3 (2).

2 Forgery Act 1830, s 21; Marriage Act 1949, s 79 (1), Sch. 5. The minister must certify the correction in the copy of the register transmitted by him to the diocesan registrar: Forgery Act 1830, s 21 proviso. For the corresponding provision relating to marriage registers, see PARA 1034 note 3 ante.

UPDATE

1116 Penalties

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--1913 Act repealed: Forgery and Counterfeiting Act 1981 s 30; Schedule Pt I. See now Pt I (ss 1-13); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARAS 346-352.

NOTE 2--1830 Act s 21 repealed; see now Parochial Registers and Records Measure 1978 s 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1117. Custody of parochial registers and records.

1117. Custody of parochial registers and records.

The bishop of a diocese may give directions for the care and repair of register books of baptisms, marriages and burials in the power and custody of any minister¹ of the diocese². The expense of complying with directions must be met by the parochial church council³ out of money in its hands either specially collected for the purpose or otherwise available⁴. In particular the bishop may require the books to be kept in a safe or chest complying with specified requirements in respect of the materials of which it is constructed, its holding capacity and the security it affords against damage by fire, damp or otherwise and against wrongful interference with the registers⁵. His directions bind all persons concerned, either as owners or custodians of the register books⁶.

The bishop may establish, appoint officers to, and control a diocesan record office⁷, in which any minister may deposit any register books of baptisms, marriages⁸ and burials, which are not in use for the purpose of making entries, or any documents⁹ of value as historical records and evidence of legal rights in his custody or in that of the churchwardens or of the parochial church council or in the joint custody of any of them¹⁰. After the establishment of a diocesan record office, the bishop may cause the register books and documents¹¹ to be inspected and reported on by some person authorised by him¹², and if on report it appears to the bishop that any such register books or documents are in danger, or that any directions as to the care of register books have not been complied with, he may send a copy of the report to the minister concerned, and after fourteen days¹³ may order any such register books as are not in use for the purpose of making entries, or any such documents, to be deposited in the diocesan record office within a specified period¹⁴ unless in the meantime adequate steps have been taken to his satisfaction to remove the danger or comply with the directions¹⁵. Any baptism, marriage or burial registers so deposited are to be kept by and remain in the power and custody of the chief officer of the diocesan record office¹⁶.

If on the application of the person who would be entitled to the custody of any such register or documents had they not been so deposited for their return, the bishop is satisfied that any directions he may give with regard to them will be duly complied with, he must, and in any other case may, order them to be returned to that person's custody¹⁷.

Provision is made for the transfer of registers and documents between different diocesan record offices on the foundation of a new diocese or an alteration of diocesan boundaries¹⁸. Every chief officer of a diocesan record office who under these provisions has marriage registers in his custody must furnish particulars of them to the Registrar General¹⁹ and if such a register is required in order to correct or amend any entry in it he must deliver it to the minister concerned for that purpose²⁰. The bishop has power on the application of any person or body wishing to print or otherwise reproduce, at his or its own cost, any register or document which can be deposited under these provisions and which is in the power and custody of a minister in the diocese to authorise its temporary deposit under these provisions so as to be available for printing or reproduction²¹.

1 'Minister' means every rector, vicar, curate or other officiating minister having any register books of baptisms, marriages or burials in his power, but does not include a chaplain appointed by a body maintaining a cemetery under statutory powers: Parochial Registers and Records Measure 1929, s 13.

2 Ibid s 1 (1). The Parochial Registers Act 1812, s 5 (see PARA 1113 ante), has effect subject to the provisions of the Parochial Registers and Records Measure 1929: see s 1 (2). The Measure of 1929 applies also to the

registers and records of guild churches (as to which see PARA 597 et seq ante): City of London (Guild Churches) Act 1952, s 25.

3 See PARA 576 et seq ante.

4 Parochial Registers and Records Measure 1929, s 1 (2).

5 Ibid s 1 (1) (i). He may also give directions for the repainting or repair of the chest or safe (s. 1 (1) (ii)) and the rebinding or repair of the books (s. 1 (1) (iii)), as well as general directions as to their care and safe keeping (s. 1 (1) (iv)).

6 Ibid s 1 (1).

7 Ibid s 2 (1). In selecting the site he must have regard to its security against fire, damp etc.: s 2 (2). Where circumstances so require he may establish more than one records office: s 12.

8 Duplicate register books of marriage which when filled are (under the provisions of the Marriage Act 1949, s 60 (1)) to be delivered to a superintendent registrar may not be deposited: Parochial Registers and Records Measure 1929, s 5 (i); Marriage Act 1949, s 79 (1), (4), Sch. 5, Part I. See REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 559.

9 As well as duplicate marriage registers (see note 8 supra), the following documents may not be deposited: manorial documents as defined in the Law of Property Act 1922, s 144A (6); Law of Property (Amendment) Act 1924, Sch. 2 (repealed); and any document deposited in a parish under the Tithe Acts 1836 to 1924, or under any local or personal Act by virtue of which any cornrents, rentcharges or money payments are payable in lieu of tithes: Parochial Registers and Records Measure 1929, s 5 (ii), (iii).

10 Ibid s 3.

11 Ibid s 4, applies with necessary modifications to deeds and documents of value as historical records or as evidence of legal rights whether in the custody of a minister, churchwardens or parochial church council, or in joint custody: s 4 (4). As to documents which may not be deposited, see note 9 supra.

12 Ibid s 4 (1).

13 During the fourteen days the bishop must consider any representation the minister may make: ibid s 4 (2).

14 If the matter is urgent he may order the documents to be deposited unconditionally within seven days: ibid s 4 (3) (i).

15 Ibid s 4 (2), (3) (ii).

16 Ibid s 2 (3).

17 Ibid s 6 (1), (2). The powers under the Measure continue to apply to registers and documents even after their return: s 6 (3).

18 See ibid s 7. If a new diocese has no diocesan record office the diocesan registrar holds the registers and documents: s 7.

19 Ibid s 8 (i).

20 Ibid s 8 (ii).

21 Ibid s 9.

UPDATE

1117 Custody of parochial registers and records

1812 Act and 1929 Measure consolidated with amendments as below: Parochial Registers and Records Measure 1978.

TEXT AND NOTE 2--Now 1978 Measure s 11(6). The provision applies to registers of all religious enactments: s 6(1).

NOTE 4--Now *ibid* s 11(9).

NOTE 5--Now *ibid* Sch 2; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 12.

NOTE 6--Now 1978 Measure s 11(6).

TEXT AND NOTES 7-10--For current provisions relating to diocesan record offices, of which there may be more than one per diocese, see *ibid* ss 7, 8, 10; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 7. Any site selected as an office must now be a depository provided under the Local Government (Records) Act 1962, Local Government Act 1972 or Public Records Act 1958, or a site the bishop considers suitable to be designated under the last Act: 1978 Measure s 7(4).

The offices may now be used for the deposit of manorial documents and documents to which Tithe Act 1836 applies: 1978 Measure s 8.

NOTE 12--Now every archdeacon must cause the registers and records to be inspected: *ibid* s 9; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), (2), Sch 1 para 5. As to the closure of old register books see 1978 Measure s 9A; 1992 Measure s 4(1), Sch 1 para 6.

TEXT AND NOTES 13-15--Now 1978 Measure s 12. Fourteen day period now any period up to twenty-eight days: s 12(1).

The bishop may now make an order for deposit whenever he thinks provisions of the 1978 Measure are not being complied with, which includes those cases where reports made to him under s 9(1) are unsatisfactory: *ibid* s 12.

A book or record may be deposited in the diocesan record office without a faculty: 1978 Measure s 12A; Church of England (Miscellaneous Provisions) Measure 1992 s 4(1), Sch 1 para 8.

TEXT AND NOTE 16--Now any register so deposited; see TEXT AND NOTE 2 and 1978 Measure s 6(1).

NOTE 17--Now *ibid* s 13.

NOTE 18--Now *ibid* s 15.

NOTES 19, 20--Now *ibid* s 22.

TEXT AND NOTE 21--See now *ibid* s 16(2), (3), expressed in broadly similar terms. The bishop's power only comes into play now when the person who has custody of the registers or records required has refused to deliver them up: s 16(2), (3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(2) CONSECRATED CHURCHES AND CHURCHYARDS/(viii) Registers/1118. Order for deposit of parochial registers and records.

1118. Order for deposit of parochial registers and records.

An order may be made by the county court of the district in which register books or documents are situate on the application of the bishop to enforce an order made by him for the deposit of register books or documents in the diocesan record office¹, or for the delivery of any register book of baptisms, marriages or burials which was originally in the custody of any minister or churchwardens in the diocese but is at the time of the application in the wrongful possession of any other person, to the bishop or the minister concerned².

Proceedings in the county court should apparently be brought by action commenced by plaintiff³ and the proceedings follow the general county court practice⁴.

1 Parochial Registers and Records Measure 1929, s 10 (1).

2 Ibid s 10 (2). Subject to the Measure, the title or right to possession of register books of baptisms, marriages or burials in the lawful power and custody of a minister or of a minister and churchwardens is incapable of assignment whether for value or otherwise: s 10 (3).

3 See CCR Ord. 6, r 1. Under Ord. 6, r 4, proceedings may, however, be commenced by originating application wherever an action is not appropriate. As to directions which the judge is enabled to give where proceedings are commenced in the wrong form, see Ord. 6, r 7.

4 For a form of particulars of claim, see Court Forms. All proceedings must be instituted with reference to the Parochial Registers and Records Measure 1929: see CCR Ord. 6, r 9.

UPDATE

1118 Order for deposit of parochial registers and records

TEXT AND NOTES--1929 Measure s 10 now Parochial Registers and Records Measure 1978 s 12(9). The effect of the paragraph is unaltered.

NOTES 3, 4--CCR replaced by CCR 1981, further replaced by the Civil Procedure Rules 1998, SI 1998/3132. See generally CIVIL PROCEDURE.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(i) Redundancy Provisions in Pastoral Schemes/1119. Declarations of redundancy.

(3) REDUNDANT CHURCHES

(i) Redundancy Provisions in Pastoral Schemes

1119. Declarations of redundancy.

A pastoral scheme¹ may make a declaration of redundancy in respect of (1) a church² which the Church Commissioners are satisfied is not required as a parish church or chapel of ease or will cease to be so required as a result of any provision of the scheme³; or (2) any part of a church (being a parish church or chapel of ease) which the commissioners are satisfied is no longer required for use as part of the church or will cease to be so required as a result of any provision of the scheme⁴. Such a declaration may be made in respect of a parish church notwithstanding that the parish will have no parish church when the declaration takes effect, and the status of the parish is not thereby affected⁵.

Provision may be made for the use, care and maintenance or the demolition of the church or part of a church to which the declaration relates, and also for dealing with a churchyard or other land annexed or belonging to the church⁶. The church or part of the church to which the declaration relates is referred to as the 'redundant building'⁷.

1 As to pastoral schemes, see PARA 856 et seq ante. As to the procedure necessary where the pastoral scheme is to make a declaration of redundancy, see the Pastoral Measure 1968, ss 3 (4)-(6), 4 (2), 5 (2), 93 proviso, and PARAS 856, 862, 878 ante. As to the right of appeal before the pastoral scheme is confirmed by Order in Council, see s 8, Sch. 2, and PARAS 880, 881 ante; and *Elphick v Church Comrs* [1974] AC 562, PC, where an appeal against a pastoral scheme containing a declaration of redundancy was dismissed.

2 For the meaning of 'church', see PARA 865 note 1 ante. The redundancy provisions apply also to a church designated as a guild church under the City of London (Guild Churches) Acts 1952 and 1960 other than the church of St Lawrence Jewry (Pastoral Measure Act 1968, s 92 (1)), and to churches provided under any private or local Act passed before 1st April 1969 (s. 93).

3 Ibid s 28 (1) (a).

4 Ibid s 28 (1) (b).

5 Ibid s 28 (2). From the date when the declaration takes effect in respect of the whole of a church, the church is closed for public worship except as may be provided under Part III (ss. 42-66): s 28 (3). Where a parish has no parish church the bishop must license a building or part of a building for public worship: s 29 (1). Where the purposes of a charity include the giving of sermons or lectures in the church which is declared redundant, they must be given in the parish church or such other church as the bishop may with the Charity Commissioners' approval by instrument under seal direct: s 63 (3).

6 Ibid s 28 (1). Such provision is made in accordance with Part III (ss. 42-66) either by a pastoral scheme (in the circumstances specified in ss 46 and 47) or by a scheme made under Part III called a 'redundancy scheme': ss 28 (1), 48.

7 Ibid s 28 (1).

UPDATE

1119 Declarations of redundancy

NOTES--Consolidated in Pastoral Measure 1983; see s 28.

NOTE 1--See now *ibid* ss 3(7)-(10), 4, 5(2), 6(3), 90 and s 9, Sch 2.

NOTE 2--See now *ibid* ss 89(1), 90.

TEXT AND NOTES 3, 4--In head (1), words 'the Church Commissioners are satisfied' and in head (2), words 'the commissioners are satisfied' repealed: Pastoral (Amendment) Measure 1982 s 21.

NOTE 5--1968 Measure ss 29(1), 63(3) now 1983 Measure ss 29(1), 63(4) respectively.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(i) Redundancy Provisions in Pastoral Schemes/1120. Appropriation to uses and demolition.

1120. Appropriation to uses and demolition.

Where a new church or place of worship¹ is to be provided to take the place of a church or churches², and a pastoral scheme makes a declaration of redundancy in respect of the church or churches to be replaced³, and the Advisory Board for Redundant Churches⁴ certifies that the demolition of the redundant building would not be objectionable on the ground of historic or architectural interest or certifies that features of historic or architectural interest are proposed to be incorporated in the new church or place of worship and that the board is satisfied with the proposals⁵, the pastoral scheme may make further provision for the appropriation or demolition of the redundant building⁶ and for payment to the Church Commissioners of the proceeds of any sale or exchange of the building or its site and the premiums on any lease or licence of the building⁷.

In any other case where a pastoral scheme makes a declaration of redundancy in respect of any church or part of a church, and the commissioners are satisfied that a suitable use or uses will be available for the redundant building, the scheme may provide for its appropriation to such use or uses⁸.

In all other cases, no further provision beyond the declaration of redundancy may be made by a pastoral scheme with respect to the redundant building, but such further provision must be made by a redundancy scheme⁹. This is without prejudice to the provisions relating to restoration of a redundant building to use as a church¹⁰.

1 In this context 'place of worship' means a building licensed by the bishop under the Pastoral Measure 1968, s 29, for public worship according to the Church of England, being a building used wholly for such purpose and purposes ancillary to it, or partly for those purposes and partly for other ecclesiastical purposes of the parish or purposes ancillary to it: s 46 (3); and see PARA 1119 note 5 ante.

2 Ibid s 46 (1) (a).

3 Ibid s 46 (1) (b).

4 As to the board, see *ibid* s 42, and PARA 1135 post.

5 Ibid s 46 (1) (c).

6 The appropriation must be to such use or uses as appear to the Church Commissioners to be suitable for the building which are specified or generally described in the scheme: ss 46 (1) (i), 51 (1) (a). See also s 51 (8), and PARA 1122 note 1 post. The scheme may also provide for any of the matters applicable to redundancy schemes mentioned in s 51 (2) or (3) (see PARA 1122 post): s 46 (1) (i).

7 Ibid s 46 (1) (ii). The scheme may also provide for the application of the net proceeds and premiums to defray the cost of providing the new church or place of worship, and for the payment of two-thirds of the balance to the diocesan pastoral account and for the application by the commissioners of the remaining one-third in accordance with s 52 (see PARA 1123 post): s 46 (1) (ii). The commissioners may vary the proportions of two-thirds and one-third: s 53 (1) (b), (4); Synodical Government Measure 1969, s 2 (2). As to the diocesan pastoral account, see the Pastoral Measure 1968, ss 77, 90 (1), and PARA 1123 note 2 post. Where a scheme makes such further provision for appropriation or demolition, the declaration of redundancy cannot take effect until the new church or place of worship is provided, unless the commissioners are satisfied that a suitable building will be available in the interim period for use in place of the church to be disposed of or demolished: s 46 (2). The provisions of the scheme may be amended or revoked by a subsequent redundancy scheme: s 57. As to the vesting of property which is subject to the scheme, see s 59, and PARA 1125 post.

8 Ibid s 47. As to suitable use, see s 51 (8), and PARA 1122 note 1 post. The scheme may also provide for any of the matters applicable to redundancy schemes mentioned in s 51 (2) or (4) (see PARA 1122 post): s 47. The

provisions of the scheme may be amended or revoked by a subsequent redundancy scheme: s 57. As to the vesting of property which is subject to the scheme, see s 59, and PARA 1125 post.

9 Ibid s 48. Any further provision must be made under ss 49-66 and schemes made and confirmed thereunder (referred to in the Measure as 'redundancy schemes'): s 48.

10 Ibid s 48. As to the restoration to use of redundant buildings, see s 58, and PARA 1131 post.

UPDATE

1120 Appropriation to uses and demolition

TEXT AND NOTES 1-7--1968 Measure s 46, as amended, consolidated in Pastoral Measure 1983 s 46.

Where the commissioners are satisfied that a new church or place of worship is to be provided in the area of a benefice to take the place of a church building or church buildings in that area which should thereupon be declared closed for regular public worship and where the commissioners, after consulting the Church Buildings Council, are satisfied with the proposals made for the future of the church building or any of the church buildings to be closed, then a pastoral church buildings scheme may further provide (1) for the appropriation of the redundant building (ie in accordance with s 51(1)(a): see PARA 1122) or for its demolition, and for any of the matters mentioned in s 51(2), (3) or (4) (see PARA 1122) (s 46(1)(a)); (2) for the payment to the commissioners of the proceeds of any sale or exchange of the building or the site of it, or any part of the building or site, with or without any land annexed or belonging to it, and the premiums on any lease or licence of the building or site or any part of the building or site with or without any such land (s 46(1)(b)); and (3) for the application of the net proceeds and net premiums to defray the cost of providing the new church or place of worship and, if the whole amount is not required for that purpose, for the payment of two-thirds of the balance to the diocesan pastoral account and for the application by the commissioners of the remaining one-third in accordance with s 52 (see PARA 1123) (s 46(1)(c); s 46(1) amended by the Dioceses, Pastoral and Mission Measure 2007 s 42(a)). 'Place of worship' means a building licensed by the bishop for public worship in accordance with the rites and ceremonies of the Church of England, being a building used wholly for the purposes of such worship and purposes ancillary to it, or partly for those purposes and partly for other ecclesiastical purposes of the parish or purposes ancillary to it, and includes a building which, pursuant to an agreement under the Sharing of Church Buildings Act 1969, is to be used as a place of worship jointly with another church and is to be owned by the Church of England only or to be jointly owned by that Church and any other Church: 1983 Measure s 46(10). References to the provision of a new place of worship are to be construed as including references to the provision of such a place by adapting, improving or repairing an existing building: s 46(9). Special provision is made in respect of a Church which was the subject of a sharing agreement under the Sharing of Church Buildings Act 1969: see 1983 Measure s 46(8).

A pastoral scheme which provides for the demolition of a redundant building may provide for its demolition by the Diocesan Board of Finance: s 46(2) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 42(b)).

Where a pastoral scheme makes such provision as is referred to in the 1983 Measure s 46(1), the declaration of redundancy will not take effect until the new church or place of worship is provided unless the commissioners are satisfied that, if the church or any of the churches to be replaced is disposed of or demolished before such provision, a suitable building will be available in the interim period, not necessarily in the same parish, for use in place of that church: s 46(7).

TEXT AND NOTE 8--1968 Measure s 47 now Pastoral Measure 1983 s 47(1). Where a pastoral scheme makes a declaration of redundancy in respect of any church or part of a church and the commissioners are satisfied that no suitable or appropriate alternative use will be available for the redundant building when the declaration takes effect, then, if it appears to the commissioners (1) after consultation with the Church Buildings Council that the building is of such historic and archaeological interest or architectural quality that it ought to be preserved in the interests of the nation and the Church of England, and (2) that the Churches Conservation Trust (see PARA 1137) will have the resources to meet the cost of repairing and maintaining it, the scheme may provide for its care and maintenance by the trust: s 47(2) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 43(a)); Pastoral (Amendment) Measure 1994 s 3.

Where a pastoral scheme provides for the care and maintenance of a redundant building or any part of it by the trust, the scheme may also provide for the care and maintenance by the trust of the whole or any part of the land annexed or belonging to the building or the church of which the building is part, and may so provide notwithstanding that the land is or has been used for burials: 1983 Measure s 47(3). Where a pastoral church buildings scheme contains a declaration of closure of a church for regular public worship and the church is neither a listed building nor situated in a conservation area, and the commissioners are satisfied with the proposals for the future of the building, the scheme may provide for the demolition of the building closed for regular public worship and for any of the matters for which s 51(4) makes provision and s 51(5) to (11) apply accordingly: s 47(3A) (added by the Dioceses, Pastoral and Mission Measure 2007 s 43(b)).

NOTE 8--Now it may provide for any of the matters mentioned in the 1983 Measure s 51(2), and s 51(5)-(11) applies: s 47(1). 1968 Measure ss 57, 59 now 1983 Measure ss 57, 59 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 paras 17, 18).

NOTES 9, 10--Now Pastoral Measure 1983 s 48 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 12).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(ii) Redundancy Schemes/1121. Preparation of redundancy schemes.

(ii) Redundancy Schemes

1121. Preparation of redundancy schemes.

The Church Commissioners must not prepare a redundancy scheme in respect of the redundant building for at least one year from the date when the declaration of redundancy takes effect¹. In exceptional cases a scheme may be prepared before the one year 'waiting period' expires². When the waiting period has expired, and not later than three years after the declaration of redundancy takes effect, the commissioners must prepare a draft scheme with respect to the redundant building³. The commissioners may in some circumstances postpone the preparation of a draft scheme for a minimum further period⁴.

The commissioners must serve copies of the draft scheme on the diocesan board of finance, the local planning authority⁵ or the authorities concerned, and the Advisory Board for Redundant Churches⁶ and, if the draft scheme provides for the care and maintenance by the Redundant Churches Fund⁷ of the redundant building, on that fund⁸. The commissioners must publish notice of the draft scheme⁹ and representations may be made to them¹⁰. If the commissioners decide to proceed with the draft scheme they must seal a copy, with any amendments, thus making the scheme, which they must then submit to Her Majesty in Council, who may confirm the scheme by Order in Council¹¹. If the commissioners decide not to proceed with the draft scheme, or to withdraw it owing to an unforeseen change of circumstances, they must as soon as possible prepare a new draft scheme¹².

There are provisions for a redundancy scheme, in exceptional circumstances, to be made otherwise than following upon a declaration of redundancy¹³.

A redundancy scheme may, before or after it comes into operation, be amended, and its provisions revoked, substituted or complemented by a subsequent redundancy scheme¹⁴.

1 Pastoral Measure 1968, s 49 (1). As to declaration of redundancy, see PARA 1119 ante. The declaration takes effect when the pastoral scheme is confirmed by Order in Council and notice of it is published, or at some later date as provided in the scheme: see ss 10, 39 (3), and PARA 877 ante. As to the interim vesting of property during the 'waiting period' and its care and maintenance, see s 49 (1), (2), and PARA 1124 post.

2 If the advisory board (see PARA 1135 post) certifies that demolition would not be objectionable on the ground of historic or architectural interest, the commissioners may proceed forthwith with a scheme providing for the demolition of the building and other matters mentioned in s 51 (3) (see PARA 1122 post): s 49 (1) proviso (i). If the commissioners are satisfied that a suitable use or uses will be available before the expiration of the waiting period, they may proceed forthwith with a scheme providing for appropriation of the building to such use or uses and for other matters mentioned in s 51 (2) (see PARA 1122 post): s 49 (1) proviso (ii).

3 Ibid s 50 (1). In cases falling within s 49 provisos (i) or (ii) (see note 2 supra) the scheme must be made not later than three years after the conditions therein are fulfilled: s 50 (1). Before preparing a draft scheme the commissioners must consult the bishop and, if it is proposed to provide for the demolition or care and maintenance by the Redundant Churches Fund (see PARA 1137 post) or for any architectural or structural changes for the purpose of facilitating the use of the redundant building, the advisory board: s 50 (2). The draft scheme must provide for the relevant matters mentioned in s 51 (see PARA 1122 post): s 50 (1).

4 The period may be extended if negotiations concerning the scheme are still in progress or if there is an unforeseen change of circumstances: s 50 (1) proviso.

5 For the meaning of 'local planning authority', see PARA 862 note 2 ante.

- 6 As to the board, see PARA 1135 post.
- 7 As to the Redundant Churches Fund, see PARA 1137 post.
- 8 Pastoral Measure 1968, s 50 (3).
- 9 Ibid s 50 (4). Publication is to be in one or more local newspapers and must state the effect of the draft scheme and name a place for inspection of a copy: s 50 (4).
- 10 Ibid s 50 (4). The notice must give at least twenty-eight days from publication for written representations to be made to the commissioners: s 50 (4). The commissioners must consider representations duly made and any unforeseen change of circumstances affecting the implementation of the draft scheme and must consult the bishop, and may then decide not to proceed with the draft scheme or to amend it or to proceed with it in its original form: s 50 (5).
- 11 Ibid s 50 (6). The scheme will normally take effect upon publication of the Order in Council (s. 50 (8), applying ss 9, 10 (see PARAS 878, 880 ante)), but it may take effect later as provided in the scheme (ss. 10 (2), 39 (3), 50 (8), 51 (9)). After publication the validity of the scheme cannot be questioned: ss 10 (1), 50 (8).
- 12 Ibid s 50 (7). The provisions of s 50 (2)-(6) apply to the new draft scheme: s 50 (7).
- 13 Thus where a bishop certifies that on 1st April 1969 (the date of commencement of the Pastoral Measure 1968) a church in his diocese has not been used for divine service for at least five years and the incumbent, the patron and the parochial church council consent, the commissioners may by order declare the church redundant, whereupon Part III (ss. 42-66) applies: s 54 (1). Where any church or part of a church has been demolished before 1st April 1969 or is subsequently demolished, otherwise than under Part III, a redundancy scheme may be prepared providing for all or any of the matters in s 51 (3), and the procedure in s 50 (2)-(6), (8), applies to the scheme: s 54 (2). The provisions in s 54 do not apply to a consecrated chapel belonging to a charity: s 55 (5).
- 14 Ibid s 57 (1)-(3). The procedure contained in s 50 (2)-(6) applies to the amending scheme: s 57 (1). Provisions in pastoral schemes made under s 46 or s 47 may similarly be amended by subsequent redundancy schemes: s 57 (1). An amending scheme may revoke all or any of the provisions of the previous scheme (or the redundancy provisions of the pastoral scheme) and may substitute or add other provisions providing for the matters mentioned in s 51 (see PARA 1122 post), and may contain any necessary or expedient transitional provisions: s 57 (2).

UPDATE

1121 Preparation of redundancy schemes

NOTES--Pastoral Measure 1968 consolidated in Pastoral Measure 1983: see table para 1435A.

TEXT AND NOTES 1, 2--For 'one year' read 'six months': ibid s 49.

NOTE 1--1968 Measure ss 10, 39(3) now 1983 Measure ss 11, 38(3); reference to confirmation and publication of notice omitted (s 11 amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 6).

NOTE 2--Now the commissioners may proceed provided that they do not prepare a pastoral (church buildings disposal) scheme in respect of a building closed for regular public worship for a period of six months after the declaration takes effect if the scheme provides for the demolition of a building which is either a listed building or situated in a conservation area, unless the commissioners are satisfied, after consulting the Church Buildings Council, that, at that stage, there is no objection to the demolition taking place: 1983 Measure s 49(1) proviso (amended by the Dioceses, Pastoral and Mission Measure 2007 s 44(b), (c)).

NOTES 3-12--Now Pastoral Measure 1983 s 50 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 14; and renumbered by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 8).

NOTE 3--However, if the Council has advised that the demolition of the redundant building or part of it would not in its opinion be objectionable, the requirement to consult with the board in Pastoral Measure 1983 s 50(2) does not apply in relation to that building or part, as the case may be: s 50(2) proviso (amended by the Dioceses, Pastoral and Mission Measure 2007 s 45(c)). After preparing the draft scheme and before proceeding under the 1983 Measure s 50 the commissioners must consult the bishop: s 50(2A) (added by the Dioceses, Pastoral and Mission Measure 2007 s 45(d)).

TEXT AND NOTE 4--Now if before the end of the two-year period it is found to be impracticable to prepare the draft scheme before that period expires, and it seems to the commissioners, after consulting with the Diocesan Board of Finance, reasonable to do so, they may, with the consent of the bishop postpone the preparation of the draft scheme for such minimum further period or periods as they find to be necessary: 1983 Measure s 50(1) proviso (amended by the Dioceses, Pastoral and Mission Measure s 45(b)).

TEXT AND NOTE 8--A copy must also be served on the Commonwealth War Graves Commission, English Heritage, the Joint Committee of the National Amenity Societies, and the Church Buildings Council: Pastoral Measure 1983 s 50(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 14; Dioceses, Pastoral and Mission Measure 2007 s 45(e)). Where the draft scheme makes or is to make any such provision as is referred to in the 1983 Measure s 51(1)(a) and it is proposed to make any architectural or structural changes in the building closed for regular public worship or any part thereof to facilitate the use or uses referred to in s 51, the commissioners may not make the scheme unless they have first consulted the Church Buildings Council on those proposed changes: s 50(4A) (added by the Dioceses, Pastoral and Mission Measure 2007 s 45(f)). See further the 1983 Measure s 50(5A)-(5C) (added by the Dioceses, Pastoral and Mission Measure 2007 s 45(g)).

NOTE 11--Now Pastoral Measure 1983 ss 10, 11 apply, with necessary modifications, to schemes under s 50 as they apply to pastoral church building schemes: s 50(9) (substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 14; and amended by the Dioceses, Pastoral and Mission Measure 2007 s 45(h)).

NOTE 13--1968 Measure s 54(1) now 1983 Measure s 54(1) and relates to a church or part of a church. Where by virtue of s 54(2) a redundancy scheme provides for any of the matters mentioned in s 51(4), s 51(5) applies in relation to the proceeds and net proceeds of any sale or exchange, and to the premiums and net premiums on any lease, of the site or part of the site of the church or part of the church to which the scheme applies as it applies where a redundancy scheme which provides for the demolition of a redundant building also provides for any of those matters: s 54(3). Where the commissioners are satisfied that a new church or place of worship is to be provided in the area of the benefice in which a demolished church was situated, to take the place of the demolished church, the net proceeds and the net premiums must be applied in accordance with s 46(1)(c): s 54(3) proviso; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 20. 1968 Measure s 55(5) now 1983 Measure s 55(5).

NOTE 14--Now Pastoral Measure 1983 s 57 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 17; and the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 11). Without prejudice to the provisions of s 57(2), the commissioners may, with the agreement of the Secretary of State, make an amending redundancy scheme which provides (a) for empowering the commissioners to sell, give or exchange any property vested in the Churches Conservation Trust (see PARA 1137), being a redundant building or any part of one or any land annexed or belonging to the building or the church of which it forms part, for any use or uses which appear to the commissioners to be suitable and which are specified or described

in the scheme; and (b) for empowering the Diocesan Board of Finance to use or hold that property for such use or uses, or to let or license it for that use or those uses, or partly the one and partly the other; and the scheme may for that purpose provide that immediately before the date on which the property vests in the commissioners under s 59(2) (see PARA 1125) or in the Diocesan Board of Finance under s 59(3) (see PARA 1125), as the circumstances require, it will cease to be vested in the trust: s 57(3). Before preparing a draft of a scheme which provides as above, the commissioners must consult the trust: s 57(3).

The proceeds of any sale or exchange made, and the premiums on any lease or licence granted, by virtue of s 57(3) are to be paid to the commissioners, and out of those proceeds or premiums, as the case may be, the sum expended by the Churches Conservation Trust (see PARA 1137) on the care and maintenance of the property to which the amending redundancy scheme relates, or so much of it as the commissioners may, with the agreement of the Secretary of State, determine, must be repaid to the trust by the commissioners, and subject to any order made under s 53(1) (b), the net proceeds or net premiums, as the case may be, must be paid and applied in accordance with s 51(5): s 57(4) (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 11).

Where any property to which the amending redundancy scheme relates is by virtue of the 1983 Measure s 57(3) let or licensed by the Diocesan Board of Finance, the net rent from time to time paid must be paid by the Board to the Churches Conservation Trust (see PARA 1137) until the sum expended by the trust on the care and maintenance of that property, or so much of that sum as the commissioners may, with the agreement of the Secretary of State, determine, has been repaid to the trust out of such rent: s 57(5).

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1122. Contents of redundancy schemes.

A redundancy scheme must make the following provision for the redundant building: (1) if a use or uses¹ appearing to the Church Commissioners to be suitable have been found for the building or any part of it, the scheme may provide for appropriating the building or part to that use or uses, which must be specified or generally described in the scheme²; (2) if such use or uses cannot be found and it appears to the commissioners, after consulting the Advisory Board for Redundant Churches³, that the building or part is of such historic or architectural interest that it ought to be preserved in the interests of the nation and the Church of England, the scheme may provide for its care and maintenance by the Redundant Churches Fund⁴; (3) failing this, the scheme must provide for the demolition of the building or the part not appropriated or provided for under the foregoing provisions⁵.

Where a redundancy scheme provides for appropriating the redundant building or part of it to a use or uses there specified or described, the scheme may also provide (a) for appropriating the whole or part of the land annexed or belonging to the building or the church⁶ of which it forms part to a use or uses so specified or described⁷; (b) for empowering the diocesan board of finance to use or hold the property concerned for the use or uses so specified or described or to let or license the property for such use or uses⁸; and (c) for empowering the commissioners, subject to any conditions prescribed by the scheme, to sell, give or exchange the property concerned or part of it for such use or uses⁹.

Where a redundancy scheme provides for the demolition of the redundant building or part of it, the scheme may also provide (i) for the disposal¹⁰ by the commissioners of the site or part of the site of the demolished building, with or without the whole or part of the land annexed or belonging to the building or to the church of which it forms part¹¹; (ii) for the disposal of the material arising from the demolition¹²; (iii) for specifying the use or uses for which any such land disposed of by the commissioners is to be used, or allowing it to be used without limitation¹³; and (iv) for appropriating the site of the demolished building or part of it for use as part of the churchyard or burial ground or for other ecclesiastical purposes of the parish¹⁴.

In exercising their foregoing powers to dispose of any building or land, the commissioners or the board may include in the instrument of disposition¹⁵ such covenants as to the use of the building or land as the commissioners or the board think necessary or expedient to give effect to the provisions of the scheme or otherwise to secure the suitable use of the building or land¹⁶.

1 The scheme may appropriate the building to use for such special or occasional religious worship as may be authorised by the bishop or to use as a place of religious worship for a university, college, school or other institution, or to use for religious worship by any church other than the Church of England: Pastoral Measure 1968, s 51 (8). This applies also for the purposes of ss 47 and 48: s 51 (8).

2 Ibid s 51 (1) (a).

3 As to the board, see PARA 1135 post.

4 Pastoral Measure 1968, s 51 (1) (b). As to the fund, see PARA 1137 post. Where the scheme provides for care and maintenance by the fund, the scheme may also provide for the care and maintenance by the fund of land annexed or belonging to the building, notwithstanding that the land has been used for burials: s 51 (7).

5 Ibid s 51 (1) (c). The supplementary provisions contained in s 39 (see PARA 877 ante) apply to redundancy schemes, but without the references to the bishop or bishops: s 51 (9). Where the scheme makes provision for any land which has been used for burials, the provisions in the scheme have effect notwithstanding the Disused

Burial Grounds Act 1884, s 3 (which prohibits the erection of buildings upon a disused burial ground), provided either that no person has been buried there for at least fifty years (Pastoral Measure 1968, s 51 (6) (a)), or that no relative or personal representative of any person buried during that period has objected to the draft scheme or such objections have been withdrawn (s. 51 (6) (b)): see CREMATION AND BURIAL vol 10 (Reissue) PARA 1146. The provisions of the Town and Country Planning Act 1971, s 55 (which restricts works relating to buildings listed under s 54), do not apply to the execution of works for the demolition of a redundant building pursuant to a pastoral scheme or a redundancy scheme: Redundant Churches and other Religious Buildings Act 1969, s 2; Town and Country Planning Act 1971, s 291 (1), Sch. 23. The provisions of the planning legislation and any restriction or powers imposed by it apply and may be exercised notwithstanding that the development of land is authorised or regulated by or under the Pastoral Measure 1968: s 91; Redundant Churches and other Religious Buildings Act 1969, s 7 (3).

6 For the meaning of 'church', see PARA 865 note 1 ante.

7 Pastoral Measure 1968, s 51 (2) (a).

8 Ibid s 51 (2) (b).

9 Ibid s 51 (2) (c). In regulating the disposal of property under s 51 (2) the commissioners must consult the diocesan board of finance and have regard to their views: s 51 (5). As to the proceeds of a disposal under s 51 (2), see ss 51 (4), 52, 53, and see PARA 1123 post.

10 The disposal may be by sale, gift, exchange or lease: ibid s 51 (3) (a).

11 Ibid s 51 (3) (a). In negotiating the disposal of any property under s 51 (3) the commissioners must consult with the diocesan board of finance: s 51 (5). As to the proceeds of a disposal under s 51 (3), see ss 51 (4), 52, 53, and PARA 1123 post.

12 Ibid s 51 (3) (b).

13 Ibid s 51 (3) (c).

14 Ibid s 51 (3) (d).

15 Ie the conveyance, lease or other instrument: ibid s 62.

16 Ibid s 62. Where the land is sold, given or exchanged any such covenants are enforceable as if the commissioners or the board were the owners of adjacent land and the covenants were expressed to be for the benefit of that adjacent land, and in the case of positive covenants, as if they were negative: s 62. See REAL PROPERTY. This section is expressed to be without prejudice to any restriction or requirement in the scheme itself.

UPDATE

1122 Contents of redundancy schemes

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 1-14--Consolidated in Pastoral Measure 1983; see s 51 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 15; and the Dioceses, Pastoral and Mission Measure 2007 s 46).

NOTE 1--Now 1983 Measure s 51(13).

TEXT AND NOTE 4--In head (2), for 'such historic interest' to the end read 'such historic and archaeological interest or architectural quality that it ought to be preserved in the interests of the nation and the Church of England, and that the Churches Conservation Trust (see PARA 1137) will have the resources to meet the cost of repairing and maintaining it, the scheme may provide for its care and maintenance by the trust: 1983 Measure s 51(1)(b); Pastoral (Amendment) Measure 1994 s 4. 1968 Measure s 51(7) now 1983 Measure s 51(12).

TEXT AND NOTE 5--Head (3) now, if the building or any part of it is not appropriated or provided for under the foregoing provisions, the scheme may, with the consent of the Diocesan Board of Finance, provide for the building or any part of it to remain vested in that board and to be held by it on such terms as may be specified in the scheme: 1983 Measure s 51(1)(c). Add head (4) if the building or any part of it is not provided for under head (3), the scheme must provide for its demolition either by the Commissioners or by the diocesan board of finance: 1983 Measure s 51(1)(d) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 15).

Where a redundancy scheme provides for the redundant building or any part of it to remain vested in the Diocesan Board of Finance, the scheme may also provide (1) for appropriating the whole or any part of the land annexed or belonging to the redundant building or the church of which it forms part, to a use or uses specified or described in the scheme; (2) for empowering the board itself to use or hold that land or any part of it for the use or uses so specified or described or to let or license it for such use or uses, or partly the one and partly the other; (3) for empowering the commissioners, subject to any conditions prescribed by the scheme, to sell, give or exchange that land or any part of it for such use or uses; (4) for transferring to the board responsibility for the care and maintenance of that land or any part of it; and the scheme may provide as mentioned in head (4) notwithstanding that the land is or has been used for burials: 1983 Measure s 51(3).

In negotiating the sale or other disposal of any property under s 51(2A), the commissioners must consult with the Diocesan Board of Finance: s 51(10).

NOTE 5--1968 Measure s 51(9), (6) now 1983 Measure s 51(14), (11). 1968 Measure s 91 now 1983 Measure s 88. Cited provisions of 1969 Act and 1971 Act consolidated in Planning (Listed Buildings and Conservation Areas) Act 1990; see further TOWN AND COUNTRY PLANNING. 1969 Act s 7(3) repealed: Statute Law (Repeals) Act 2004.

NOTE 9--1968 Measure s 51(5) now 1983 Measure s 51(10), omitting requirement to have regard to their views. See also *ibid* ss 51(5), 52, 53.

NOTES 10-14--Now Pastoral Measure 1983 s 51(4) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 15).

NOTES 15, 16--1968 Measure s 62 now 1983 Measure s 62(1). Where any such covenant is subsequently varied or released by agreement, any sum of money received by the Diocesan Board of Finance in consideration of the variation or release of a covenant imposed by the Board must be paid to the commissioners and 1983 Measure s 51(5) (see PARA 1123) applies in relation to the sum so paid, and in relation to any sum of money received by the commissioners in consideration of the variation or release of a covenant imposed by them, as it applies in relation to the proceeds of any sale or exchange under s 51(2), (3) or (4): s 62(2). The Law of Property Act 1925 s 84 (except s 84(2)) (discharge or modification of restrictions affecting land by Lands Tribunal) does not apply in relation to conditions and requirements imposed under the 1983 Measure s 62(1): *ibid* s 62(3); Pastoral (Amendment) Measure 1994 s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(ii) Redundancy Schemes/1123. Proceeds of sales and other disposals.

1123. Proceeds of sales and other disposals.

The proceeds of any sale or exchange¹ and the premiums on any lease or licence¹ must be paid to the Church Commissioners, who must pay two-thirds of them to the diocesan pastoral account² and must apply the remaining one-third³ as follows⁴: (1) up to a total in any five-year period⁵ of £100,000 (or any substituted figure⁶) must be paid to the Redundant Churches Fund⁷; (2) the excess over that total in any five-year period must be allocated to the diocesan pastoral accounts of such dioceses, in such amounts, as the commissioners may determine, giving preference to the dioceses which have received and are likely to receive less by way of payments than other dioceses⁸. The net proceeds of disposals made pursuant to a pastoral scheme⁹ are paid in like manner, after defraying the cost of providing a new church or place of worship¹⁰.

The net rent payable under a lease or licence¹¹ must be paid into the diocesan pastoral account¹².

1 Ie under the Pastoral Measure 1968, s 51 (2), (3): see PARA 1122 ante. In determining the net proceeds of any sale or exchange or the net premium or net rent of any property the deductions to be made include the deduction of any money expended by the Church Commissioners, diocesan board of finance or diocesan redundant churches uses committee on the property, or for the purpose of furthering its disposal or on the demolition of any building on it, and if any question arises as to what are the net proceeds, premium or rent the commissioners' decision is conclusive: s 90 (2).

2 The diocesan pastoral account is an account for each diocese opened and held by the commissioners, to which they must transfer amounts standing to the account of certain closed funds (ie the Expenses Fund, the Diocesan Reorganisation Fund and the General Reorganisation Fund) under certain repealed provisions (ie the Union of Benefices Act 1860, s 22, the Union of Benefices Measure 1923, s 32, and the Reorganisation Areas Measure 1944), and any money payable to the account under any provisions of the Pastoral Measure 1968 or any scheme or order made under it: see s 77.

3 With the approval of the General Synod the commissioners may vary the proportion of two-thirds and one-third: *ibid* s 53 (1) (b), (4); Synodical Government Measure 1969, s 2 (2).

4 Pastoral Measure 1968, s 51 (4).

5 'Five-year period' means the period of five years beginning with the date when the Pastoral Measure 1968 came into operation (ie 1st April 1969) and any subsequent periods of five years: s 52 (2).

6 The figure of £100,000 may be varied by the Church Commissioners with the approval of the General Synod: *ibid* s 53 (1) (c), (4); Synodical Government Measure 1969, s 2 (2). The figure of £100,000 has been substituted by the figure of £350,000 or one-half of the sum paid by the commissioners under the Pastoral Measure 1968, s 45 (10) (see PARA 1137 post), whichever is the less, for the period from 1st April 1974 to 31st March 1979: Payments to Redundant Churches Fund Order 1974, S.I. 1974 No. 306, art. 3.

7 Pastoral Measure 1968, s 52 (1) (a). As to this fund, see PARA 1137 post. The commissioners may order the payment of additional sums to the fund: s 53 (1) (d).

8 *Ibid* s 52 (1) (b). These provisions relating to the disposal of sums paid to the commissioners do not apply where any church, other than a church which has been declared redundant, is purchased under compulsory powers: s 56 (4). For the meaning of 'church', see PARA 865 note 1 ante.

9 Ie under *ibid* s 46 (1): see PARA 1120 ante.

10 *Ibid* s 46 (1) (ii).

11 Ie under *ibid* s 51 (2), (3): see PARA 1122 ante.

12 Ibid s 51 (4).

UPDATE

1123 Proceeds of sales and other disposals

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

NOTE 3--Consolidated in ibid s 53(1) (b), (3) (amended by the Pastoral (Amendment) Measure 1994 s 6).

TEXT AND NOTE 4--Now 1983 Measure s 51(5), which is now subject to s 51(6)-(9).

Where in exercise of the power conferred on the Churches Conservation Trust by s 44(8) (see PARA 1137), that trust has contributed to the cost of the care and maintenance of a church or part of a church, then, unless that church or part is vested in that trust, the sum contributed by that trust under s 44(8), or so much of it as the commissioners may, with the agreement of the Secretary of State, determine, must be repaid to the trust by the commissioners out of the proceeds of any sale or exchange, or the premiums or any lease or licence, of that church or part of the site of it under s 51(2), (3) or (4) (see PARA 1122) before the net proceeds or net premiums, as the case may be, are paid or applied in accordance with s 51(5): s 51(6).

Where in exercise of the power referred to above the Churches Conservation Trust (see PARA 1137) has contributed to the cost of the care and maintenance of a church or part of a church, not being a church or part which is vested in the trust, and the church or part or the site of it is let or licensed by the Diocesan Board of Finance under s 51(2), (3) or (4) (see PARA 1122) or let by the commissioners under s 51(4) (see PARA 1122), the net rent from time to time paid thereunder must be paid by the board or the commissioners, as the case may be, to the trust until the sum contributed by the trust, or so much of it as the commissioners may, with the agreement of the Secretary of State, determine, has been repaid to the trust out of such rent: s 51(7) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 46(c)).

Where before a declaration of redundancy was made in respect of a church or part of a church that church or part was the subject of a sharing agreement under the Sharing of Church Buildings Act 1969, and on the termination of the agreement it was vested in an incumbent by s 9(3), any contribution in the nature of capital made in accordance with the agreement by any party to it, or so much of it as the commissioners may determine, may be repaid to that party by the commissioners out of the proceeds of any sale or exchange, or the premiums on any lease or licence, of that church or part or the site of it under the 1983 Measure s 51(2), (3) or (4) (see PARA 1122) before the net proceeds or net premiums, as the case may be, are paid or applied in accordance with s 51(5): s 51(8).

Where a pastoral scheme makes a declaration of redundancy in respect of a church, and the commissioners are satisfied that a new church or place of worship is to be provided in the place or area of the benefice in which the first-mentioned church is situated to take the place of that church, then, if any subsequent redundancy scheme which makes provision, within the period of three years from the declaration of closure or such longer period as the commissioners may allow, for the redundant building also provides for any of the matters authorised to be included in the scheme by the 1983 Measure s 51(2)(b) or (c), (3)(b) or (c), (4)(a) or (b) (see PARA 1122), (1) the proceeds of any sale or exchange made, and the premiums of any lease or licence granted, by virtue of those provisions must be paid in accordance with s 51(5), and (2) the net proceeds and net premiums must be applied in accordance with s 46(1) (c) and not in

accordance with s 51(5): s 51(9) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 46(d)); Church of England (Miscellaneous Provisions) Measure 1995 s 11(c).

NOTE 5--Repealed: Pastoral (Amendment) Measure 1994 s 5.

TEXT AND NOTES 6, 7--The Commissioners must allocate the moneys comprised in the remaining one-third of the net proceeds and net premiums, or the balance thereof, mentioned in the Pastoral Measure 1983 ss 46(1) and 51(5), in such proportions as they may determine between the Churches Conservation Trust, the redundant churches temporary maintenance account and the diocesan pastoral accounts of such dioceses as they may determine, subject in the case of any amounts allocated to the Churches Conservation Trust, to any order made under s 53(1): s 52(1) (substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 16; and renumbered by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 8). In exercising their duty to allocate moneys under the 1983 Measure s 52(1), the Commissioners may decide not to allocate moneys to any or all of the accounts mentioned in s 52(1), in which case all the moneys not so allocated must be paid to the Churches Conservation Trust: s 52(2) (added by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 8).

The Commissioners may by order determine the funding periods and in respect of each funding period the maximum figure to be paid under the 1983 Measure s 52: s 53(1) (a); 1994 Measure s 6. For transitional provisions, see s 14. For current amount, see Payments to the Churches Conservation Trust Order 2008, SI 2008/1968.

TEXT AND NOTES 9, 10--See now 1983 Measure s 46(1)(c), PARA 1120.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iii) Vesting and Property Matters/1124. Interim vesting, care and maintenance.

(iii) Vesting and Property Matters

1124. Interim vesting, care and maintenance.

When a declaration of redundancy¹ takes effect², the redundant building vests in the diocesan board of finance³ without any conveyance or other assurance⁴. There are certain exceptions⁵. A building which so vests does so free of any trust or burial rights⁶.

Between a declaration of redundancy taking effect and a redundancy scheme coming into operation with respect to redundant property, the board is responsible for the care and maintenance of the redundant building and the safe keeping of its contents, and must insure the building and contents⁷; the diocesan redundant churches uses committee⁸ or, as the case may be, the Church Commissioners must endeavour to find a suitable use for the building⁹. The incumbent and churchwardens, while incurring no financial obligation, must assist the board in providing reasonable supervision of the building against damage¹⁰.

1 As to declarations of redundancy, see PARA 1119 ante.

2 As to when declarations take effect, see PARA 1121 note 1 ante.

3 'Diocesan board of finance' means the board constituted for the diocese under the Diocesan Board of Finance Measure 1925 (see PARA 517 ante), although the bishop (defined in PARA 813 note 3 ante) may certify that another board of finance or body be treated as the diocesan board of finance for the purposes of the Pastoral Measure 1968: s 90 (1).

4 Ibid s 49 (1). This does not apply where s 46 or s 47 applies (see PARA 1120 ante): s 49 (1).

5 See ibid s 49 (1) proviso, and PARA 1121 ante.

6 Ibid s 59 (6). Persons who lose burial rights may claim compensation: see s 59 (6) proviso, and PARA 1125 note 17 post.

7 Ibid s 49 (2) (a). When a declaration of redundancy takes effect, any liability of a parochial church council or rector (including a lay rector) for the repair and maintenance of the redundant building and the safe keeping of its contents ceases and the Inspection of Churches Measure 1955 (see PARA 1099 ante) ceases to apply to the redundant building: Pastoral Measure 1968, s 49 (3). As long as a redundant building is vested in the diocesan board of finance pending a redundancy scheme, any property of a charity the purposes of which include the repair and maintenance of the building or its contents continues to be applicable for that purpose: s 63 (1) (a). The Charity Commissioners retain the power to make schemes in respect of such a charity under the Charities Act 1960: Pastoral Measure 1968, s 63 (2). Sch. 3 para 11 (5) (see PARA 887 ante). See also ibid s 63 (1) proviso (ii), and PARA 1125 note 21 post.

8 As to this committee, see PARA 1136 post.

9 Pastoral Measure 1968, s 49 (2) (b).

10 Ibid s 49 (2) (c).

UPDATE

1124 Interim vesting, care and maintenance

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

TEXT AND NOTE 4--Now both the redundant building and its contents so vest: 1983 Measure s 49(1).

TEXT AND NOTES 7-10--Also between these two events, the board may without obtaining a faculty, but after consulting the Diocesan Advisory Committee and the chancellor of the diocese unless the board considers that, having regard to the urgency of the need to safeguard the contents, it is not practicable to do so, transfer the contents of the redundant building or any of them to some other place for safe keeping until the coming into operation of the scheme, and may with the consent of the bishop and the incumbent or priest in charge permit the redundant building to be used occasionally for worship, including worship by persons belonging to other Christian churches: 1983 Measure s 49(2)(b), (c) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 44(d)).

Where the board transfers any of the contents of the redundant building to some other place, it must serve a notice on the commissioners, the Church Buildings Council, the Churches Conservation Trust (see PARA 1137) and the registrar of the diocese informing them of the transfer and giving particulars of the contents transferred and the address of the place in question, and must serve a similar notice on any incumbent, priest in charge, parochial church council or sequestrators concerned: 1983 Measure s 49(4) (amended by the Dioceses, Pastoral and Mission Measure 2007 s 44(f)).

TEXT AND NOTE 7--As to the disposal of chattels between the making of a declaration of redundancy and a redundancy scheme coming into operation, see *Re West Camel Church; Re Yatton Church* [1979] Fam 79, [1979] 2 All ER 652.

NOTE 7--Now 1983 Measure ss 49(2)(a), (3), 63(1)(a), (3), Sch 3 para 11(6) and s 63(1) proviso (ii). Section 63(1)(a) also applies as long as a redundant building is vested in the board in pursuance of a redundancy scheme; see PARA 1125. For 'Charities Act 1960' read 'Charities Act 1993': 1983 Measure Sch 3 para 11(6), as amended by the Charities Act 1993 Sch 6 para 18(5).

TEXT AND NOTE 10--Now the incumbent or priest in charge and the churchwardens must so assist the board: 1983 Measure s 49(2)(e).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iii) Vesting and Property Matters/1125. Vesting of property.

1125. Vesting of property.

Where a scheme¹ provides for the demolition of a redundant building or any part of it, the building or part, and any land which under the scheme is to be disposed of with its site², vests in the Church Commissioners³.

Where a scheme⁴ provides for empowering the commissioners to dispose of the redundant building or part of it or any land annexed to it for a specified use or specified uses⁵ the building, part of a building or any land vests in the commissioners⁶.

Where such a scheme⁷ provides for the use, holding, letting or licensing by the diocesan board of finance of the redundant building or part of it or any land annexed or belonging to it for a specified use or specified uses⁸, the building or land vests in the board if it is not already so vested⁹.

Where such a scheme¹⁰ provides for appropriating any land to use as part of a churchyard or burial ground¹¹ the land vests in the person in whom the churchyard or burial ground is vested¹².

Where a redundancy scheme provides for the care and maintenance by the Redundant Churches Fund¹³ of a redundant building or part of it or land annexed or belonging to it¹⁴, the building, part of a building or land vests in the fund¹⁵.

The vesting of property under the foregoing provisions takes effect without any conveyance or other assurance when the relevant provisions of the scheme come into operation¹⁶, and the property vests free of any trust or burial rights¹⁷. The body in whom the property so vests is deemed to have an interest, for the purposes of faculty proceedings, in any other property so vested or any property formerly annexed or belonging to or held with property so vested¹⁸. The commissioners may determine the boundaries of land vested under the foregoing provisions¹⁹. The foregoing provisions relating to the vesting of buildings and land may result in the removal of the legal effects of consecration²⁰.

So long as a redundant building is vested in the Redundant Churches Fund pursuant to a redundancy scheme any property of a charity the purposes of which include the repair and maintenance of the building or contents continues to be applicable for that purpose²¹. So long as a redundant building is vested in the Church Commissioners or the diocesan board of finance for a use or uses specified in a pastoral scheme or redundancy scheme the property of such a charity continues to be applicable for the building²² but only if the scheme so provides²³. There is provision for relocating sermons or lectures given under charitable trusts²⁴.

1 Ie a redundancy scheme or a pastoral scheme to which the Pastoral Measure 1968, s 46 (see PARA 1120 ante) applies: s 59 (1).

2 See *ibid* ss 46 (1), 51 (2), (3), and PARAS 1120, 1122 ante.

3 *Ibid* s 59 (1).

4 Ie a redundancy scheme or a pastoral scheme to which *ibid* s 46 or s 47 (see PARA 1120 ante, applies: s 59 (2).

5 See *ibid* ss 46 (1), 47, 51 (2), and PARAS 1120, 1122 ante.

6 *Ibid* s 59 (2).

- 7 See note 4 *supra*.
- 8 See note 5 *supra*.
- 9 Pastoral Measure 1968, s 59 (3).
- 10 See note 4 *supra*.
- 11 See the Pastoral Measure 1968, ss 46 (1), 47, 51 (1)-(3), and PARAS 1120, 1122 *ante*.
- 12 *Ibid* s 59 (4).
- 13 As to this fund, see PARA 1137 *post*.
- 14 See the Pastoral Measure 1968, s 51 (1), (7), and PARA 1122 *ante*.
- 15 *Ibid* s 59 (5).
- 16 *Ibid* s 59 (1)-(5).
- 17 *Ibid* s 59 (6). Any person entitled to burial rights may claim compensation for their loss, and in default of agreement the claim is referred to and determined by the consistory court, subject to an appeal to the Dean of the Arches and Auditor, the compensation being payable by the diocesan board of finance: s 59 (6) *proviso*.
- 18 *Ibid* s 59 (7).
- 19 *Ibid* s 79 (1). The determination, which is by instrument under seal, is binding on the commissioners, the diocesan board of finance, the Redundant Churches Fund and any incumbent, whether as the body or person in whom the land is vested or from whom it is transferred: s 79 (1). A certified copy of the instrument is sufficient evidence of its contents: s 79 (2).
- 20 As to the legal effects of consecration, see PARA 1068 *et seq ante*, and as to the removal of those effects, see PARA 1074 *ante*.
- 21 Pastoral Measure 1968, s 63 (1) (b). The Charity Commissioners retain the power to make schemes under the Charities Act 1960 in respect of such a charity: Pastoral Measure 1968, s 63 (2). See CHARITIES vol 8 (2010) PARA 194 *et seq*. If the redundant building consists in part of a church or only part of the building is so vested, it is only so applicable if and to the extent that the scheme so provides: s 63 (1) *proviso* (ii).
- 22 *Ibid* s 63 (1) (c). The Charity Commissioners retain the power to make schemes under the Charities Act 1960 in respect of such a charity: Pastoral Measure 1968, s 63 (2), Sch. 3 para 11 (5) (see PARA 887 *ante*): see CHARITIES vol 8 (2010) PARA 194 *et seq*.
- 23 *Ibid* s 63 (1) *proviso* (i). See also s 63 (1) *proviso* (ii), and note 21 *supra*.
- 24 See *ibid* s 63 (3), and PARA 1119 note 5 *ante*.

UPDATE

1125 Vesting of property

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

TEXT AND NOTE 3--It now vests in the appropriate body, which is the body, being either the commissioners or the Diocesan Board of Finance, by which in accordance with the scheme the building or part in question is to be demolished: *ibid* s 59(1).

TEXT AND NOTE 15--Now where a redundancy scheme or a pastoral scheme to which *ibid* s 47 applies so provides: s 59(5).

Where a redundancy scheme provides for transferring to the Diocesan Board of Finance responsibility for the care and maintenance of any land annexed or belonging

to a redundant building or the church of which it forms part, the land vests without any conveyance or other assurance in the Board: s 59(6).

TEXT AND NOTES 21-23--Now *ibid* s 63, also so long as a redundant building is vested in the Diocesan Board of Finance in pursuance of a redundancy scheme, any property of a charity the purposes of which include the repair and maintenance of the building or contents continues to be applicable for that purpose; *ibid* s 63(1)(a). Section s 63(1) proviso (ii) also applies in this case; see NOTE 21.

So long as any land annexed or belonging to a redundant building is vested in the Diocesan Board of Finance in pursuance of a redundancy scheme or is vested in the Churches Conservation Trust (see PARA 1137) in pursuance of a redundancy scheme or a pastoral scheme to which 1983 Measure s 47 applies, then, if that land comprises a churchyard, any property of a charity the purposes of which include the maintenance of the churchyard continues to be applicable for that purpose, but if part only of the churchyard is so vested, that property is only so applicable if and to the extent that the scheme so provides: s 63(2).

TEXT AND NOTE 21--This also applies so long as a redundant building is vested in the trust pursuant to a pastoral scheme to which 1983 Measure s 47 applies: s 63(1)(b).

NOTE 22--The reference is now to the Charities Act 1993: 1983 Measure Sch 3 para 11(6) (amended by the Charities Act 1993 Sch 6 para 18(3)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iii) Vesting and Property Matters/1126. Rights of way.

1126. Rights of way.

Where any property vests in the diocesan board of finance, the Church Commissioners or the Redundant Churches Fund under the provisions in the foregoing paragraph, and any land annexed or belonging to a church¹ the whole or part of which is a redundant building does not so vest, the scheme² may provide for conferring on any of those bodies in whom property so vests rights of way over the land not so vesting³.

Rights of way enjoyed by persons attending a church which has been declared redundant may continue to be enjoyed by the Redundant Churches Fund for the performance of its functions and by members of the public for visiting the church if the redundancy scheme provides for vesting the church in the fund⁴.

1 For the meaning of 'church', see PARA 865 note 1 ante.

2 I.e. a redundancy scheme or a pastoral scheme to which the Pastoral Measure 1968, s 46 or s 47 (see PARA 1120 ante) applies: s 60 (1).

3 Ibid s 60 (1). The rights of way are such as appear to the commissioners to be necessary (1) to enable or facilitate the use of the property so vesting for a use or uses specified or described in the scheme (s. 60 (1) (a)); (2) to enable or facilitate the use of the property so vesting which is to be disposed of by the commissioners (otherwise than for such use as aforesaid) for purposes appearing to the commissioners to be reasonable (s. 60 (1) (b)); or (3) to enable the Redundant Churches Fund to perform its functions with respect to property so vesting in the fund, including the giving of reasonable access to members of the public (s. 60 (1) (c)).

4 Ibid s 60 (2).

UPDATE

1126 Rights of way

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A. See now s 60 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 19).

TEXT AND NOTE 3--The scheme may now provide for conferring rights of way or other easements over or in the land not so vesting: *ibid* s 60(1).

TEXT AND NOTE 4--Now rights of way may continue to be enjoyed by the Churches Conservation Trust (see PARA 1137) or the Diocesan Board of Finance, as the case may be, for the performance of its functions and by members of the public for visiting the church if the church or part vests by virtue of the 1968 Measure in either body: s 60(2).

Where the Commissioners consider that it is necessary or appropriate to acquire any right of way or other easement for the benefit of land which has vested or is to vest in the Churches Conservation Trust by virtue of this Measure or is to be disposed of by them under this Measure they may acquire the right of way or easement in question: s 60A (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 20). Where rights of way or other easements have been acquired by the Commissioners under the 1983 Measure s 60A and the land for the benefit of which the rights were acquired vests in the Churches Conservation Trust by virtue of the 1983

Measure those rights also vest in the Trust: s 60(3) (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 19).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iii) Vesting and Property Matters/1127. Disposal of contents.

1127. Disposal of contents.

Before a church¹ or part of a church is demolished pursuant to a redundancy scheme or pastoral scheme, or appropriated to any use, the body in whom the church is vested must transfer the font, communion table and plate used for Holy Communion to some other church in the area of the benefice², or, if they are not needed for such other church, any church or chapel in the diocese directed by the bishop³. The scheme may also provide for the disposal of any other contents of the church, not being tombstones, monuments or memorials commemorating deceased persons buried in the church or in land annexed or belonging to it⁴.

Where a redundancy scheme provides for the care and maintenance of a church by the Redundant Churches Fund⁵, it may also provide for the vesting in and the care and maintenance by the fund of any of the contents of the church or for the disposal of such contents not being tombstones, monuments or memorials⁶.

No faculty is required for anything done in pursuance of the foregoing provisions for disposal of contents⁷.

1 For the meaning of 'church', see PARA 865 note 1 ante.

2 For the meaning of 'benefice', see PARA 768 note 1 ante.

3 Pastoral Measure 1968, s 64 (1). For the meaning of 'bishop', see PARA 813 note 3 ante. The scheme may, however, make other provision for these items and may exclude s 64 (1) where part of the church remains in use as a church: s 64 (1) proviso.

4 Ibid s 64 (2). As to the disposal of tombstones, monuments and memorials, see s 65 (1), Sch. 6, and PARA 1128 post.

5 As to this fund, see PARA 1137 post.

6 Pastoral Measure 1968, s 64 (3).

7 Ibid s 64 (4). As to faculties, see PARA 1306 et seq post.

UPDATE

1127 Disposal of contents

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A. See now s 64 (amended by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 12).

TEXT AND NOTE 6--Now where a redundancy scheme or a pastoral scheme to which the 1983 Measure s 47 applies provides for the care and maintenance of a church or part of a church by the Churches Conservation Trust (see PARA 1137) or where a redundancy scheme provides for a church or part of a church to remain vested in the Diocesan Board of Finance, the scheme may also provide for the vesting in and the care and maintenance by the trust or the Board as the case may be of any of the contents of the church or for the disposal of such contents not being tombstones, monuments or memorials: s 64(3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iii) Vesting and Property Matters/1128. Disposal of human remains and memorials.

1128. Disposal of human remains and memorials.

Where any human remains are believed to be buried in or beneath a redundant building or any land to which a redundancy scheme¹ applies, the body or person in whom the property is vested or to whom it is leased or licensed must not demolish, sell, lease or otherwise dispose of it or appropriate it or any part of it to any use or develop it unless the human remains have been removed and reinterred or cremated and any tombstones, monuments or memorials commemorating the deceased persons have been disposed of². There are exceptions to these requirements³. Moreover, if it appears to the Secretary of State that the demolition of the redundant building or the intended use of development of the property will not disturb human remains he may, after consultation with the bishop⁴, by order dispense with these requirements so far as they concern human remains⁵. Where there is situated in any such building or land a monument or memorial commemorating a deceased person whose remains are not buried in the building or land, that building or land must not be demolished, disposed of, appropriated or developed unless the monument or memorial has been disposed of as the bishop has directed⁶.

A faculty is not required for anything done under the foregoing provisions⁷.

¹ This includes the provisions of a pastoral scheme providing for matters referred to in the Pastoral Measure 1968, ss 30, 46, 47 (see PARAS 1074, 1120 ante): s 65 (9).

² Ibid s 65 (1). The disposal of the human remains and the tombstones, monuments and memorials must be in accordance with Sch. 6. For the provisions as to notice of the removal, see s 65, Sch. 6 paras 1, 2; as to removal, reinterment or cremation, see Sch. 6 paras 3, 4, 6, 10; and as to the re-erection or disposal of memorials, see Sch. 6 paras 5, 8, 10. See further CREMATION AND BURIAL vol 10 (Reissue) PARAS 1130-1133.

³ The requirements do not apply (1) to a building appropriated, without structural alteration, to use as a place of religious worship for a university, college, school or other institution, or by a church other than the Church of England (s. 65 (2) (a)); (2) to land which remains annexed or belonging to such a building (s. 65 (2) (b)); or (3) to land appropriated to use as part of a churchyard or burial ground and vested under s 59 (4) (see PARA 1125 ante) in the person in whom the churchyard or burial ground is vested (s. 65 (2) (c)).

⁴ For the meaning of 'bishop', see PARA 813 note 3 ante.

⁵ Pastoral Measure 1968, s 65 (3). Any such order may be amended by subsequent order: s 65 (4). A copy of the order must be registered in the register of local land charges: s 65 (5). Where, by virtue of an order, human remains are not removed the requirements of s 65 (1), Sch. 6, so far as they relate to tombstones, monuments and memorials, still apply: s 65 (6).

⁶ Ibid s 65 (7). The bishop must first consult the diocesan advisory committee for the care of churches, and may dispense with the requirement of s 65 (7): s 65 (7).

⁷ Ibid s 65 (8). As to faculties, see PARA 1306 et seq post.

UPDATE

1128 Disposal of human remains and memorials

NOTES--Consolidated in Pastoral Measure 1983; see s 65, Sch 6.

TEXT AND NOTE 2--For 'or appropriate it ... disposed of' now read 'or use it or any part of it for any use, or carry out any development of it or any part of it, unless (a) as respects the human remains, either the Secretary of State has made an order under

1983 Measure s 65(3) in relation to such demolition, use or development or the remains have been removed and reinterred or cremated in accordance with *ibid* Sch 6; and (b) any tombstones, monuments or memorials commemorating the deceased persons have been disposed of in accordance with Sch 6, and, in either case, the other requirements of Sch 6 have been complied with': s 65(1).

NOTE 3--Head (1) now to a redundant building the whole of which is to be used, without any structural alteration, as a place of religious worship for a university, college, school or other institution, or as a private chapel or monument, or for religious worship by a church other than the Church of England, so long as the whole of it continues to be so used without any structural alteration involving the disturbance of human remains or the removal of any tombstones, monuments or memorials commemorating deceased persons: 1983 Measure s 65(2)(a). In head (3), for 'appropriated to use', read 'which is to be used': *ibid* s 65(2)(c). Add head (4) to any land which is to be used as part of a burial ground and has been conveyed to a burial authority constituted by or under an enactment: *ibid* s 65(2)(d).

TEXT AND NOTE 5--Consultation with the Commonwealth War Graves Commission is also required: 1983 Measure s 65(3).

NOTE 5--Any such order may also be revoked by subsequent order: 1983 Measure s 65(4). A copy of the order is a local land charge: Local Land Charges Act 1975 Sch 1.

TEXT AND NOTE 6--For 'appropriated', read 'used': 1983 Measure s 65(7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iv) Preservation of Redundant Buildings/1129. Transfer of building or land to Secretary of State.

(iv) Preservation of Redundant Buildings

1129. Transfer of building or land to Secretary of State.

Where a redundant building or part of a redundant building is vested in the diocesan board of finance pursuant to a pastoral scheme or redundancy scheme¹ or pending the making of a redundancy scheme², or is vested in the Redundant Churches Fund pursuant to a redundancy scheme³, the board, with the approval of the bishop⁴ and the Church Commissioners, or the fund may enter into an agreement with the Secretary of State for the acquisition and preservation by him of the building or part of it and other land so vested in the board or the fund⁵. If any land previously annexed or belonging to the building is vested in the incumbent, he may, with the approval of the bishop and the commissioners, enter into an agreement with the Secretary of State for the acquisition of the land by the Secretary of State and for its maintenance with the building or part of it⁶.

1 See the Pastoral Measure 1968, s 59, and PARA 1125 ante.

2 See *ibid* s 49 (1), and PARA 1124 ante.

3 See *ibid* s 59, and PARA 1125 ante.

4 For the meaning of 'bishop', see PARA 813 note 3 ante.

5 *Ibid* s 66 (1); Redundant Churches and other Religious Buildings Act 1969, s 3; Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. Rights of way conferred or enjoyed under the Pastoral Measure 1968, s 60 (see PARA 1126 ante), vest with the property: s 66 (2) (a). The provisions of ss 59 (6), 61 (2), 63 (1) (see PARAS 1076, 1124, 1125 ante), apply as they apply to buildings and land vested in the fund: s 66 (2) (b). There is provision for restoration to use as a church: see s 66 (3), and PARA 1132 post. The remaining provisions of Part III (ss. 42-66), and of the redundancy or pastoral scheme, with respect to the building cease to apply on the acquisition: s 66 (1). The provisions of s 65 (1) (see PARA 1128 ante) do not apply to the disposal to the Secretary of State: s 66 (2) (c).

6 *Ibid* s 66 (4); Redundant Churches and other Religious Buildings Act 1969, s 3; Secretary of State for Environment Order 1970.

UPDATE

1129 Transfer of building or land to Secretary of State

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

NOTES 5, 6--1969 Act s 3 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 5--Now or where such a building is vested in the Churches Conservation Trust (see PARA 1137) pursuant to a redundancy scheme or a pastoral scheme to which the 1983 Measure s 47 applies, the board, with the relevant approvals, or the trust may enter into and carry out such an agreement: s 66(1).

In addition, where a redundant building or part of a redundant building situated in England is so vested, the board, with the approval referred to, or the trust may enter into an agreement with the Historic Buildings and Monuments Commission for England

for the acquisition and preservation by the Commission of the building or part of it with or without other land so situated and so vested: s 66(1); National Heritage Act 1983 s 33(3), Sch 4 para 12. The Commission may not enter into such an agreement without the Secretary of State's consent: 1983 Measure s 66(1A); 1983 Act s 33(3), Sch 4 para 12.

Where a redundant building, or part of one, situated in England has been acquired for its preservation by the Secretary of State under 1983 Measure s 66(1) either with or without any other land so situated, the Commission may by agreement with the Secretary of State undertake on his behalf the management and preservation of the building, or part of it, together with the other land, if any: 1983 Measure s 66(6); 1983 Act s 33(3), Sch 4 para 12.

NOTE 5--Now rights of way or other easements conferred under 1983 Measure s 60(1) and any rights of way enjoyed under s 60(2) vest with the property: s 66(2)(a). The provisions of *ibid* ss 59(7), 61(2), 63(1), (2) also apply as they apply to buildings and land vested in the trust: s 66(2)(b).

1983 Measure s 66(2)(a), (c) amended to refer to the Commission as well as the Secretary of State: National Heritage Act 1983 s 33(3), Sch 4 para 12.

TEXT AND NOTE 6--Now the incumbent may enter into and carry out such an agreement, and 1983 Measure s 66(2) applies in relation to any land so acquired as it applies in relation to a redundant building or part of one acquired in pursuance of s 66(1): s 66(4).

He may also enter into and carry out such an agreement with the Commission: 1983 Measure s 66(4); National Heritage Act 1983 s 33(3), Sch 4 para 12. However, the Commission may not enter into such an agreement unless the land is situated in England and the Secretary of State has consented: 1983 Measure s 66(4A); National Heritage Act 1983 s 33(3), Sch 4 para 12.

Where the Secretary of State has, under 1983 Measure s 66(4), acquired land situated in England for its maintenance with a building, or part of it, the Commission may undertake, in any agreement made under s 66(6) in relation to the building or part of it, the maintenance of the land on the Secretary of State's behalf: *ibid* s 66(7); National Heritage Act 1983 s 33(3), Sch 4 para 12.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(iv) Preservation of Redundant Buildings/1130. Transfer of contents to Secretary of State.

1130. Transfer of contents to Secretary of State.

An agreement under the foregoing provisions¹ may provide for the acquisition and preservation by the Secretary of State of any of the contents of the redundant building².

¹ See PARA 1129 ante.

² Pastoral Measure 1968, s 66 (5); Redundant Churches and other Religious Buildings Act 1969, s 3; Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. On the acquisition, the provisions of the Pastoral Measure 1968, s 63 (1) (see PARAS 1124, 1125 ante) apply to the contents as they apply to the contents of a building vested in the Redundant Churches Fund: s 66 (5). The remaining provisions of Part III (ss. 42-66), and the redundancy or pastoral scheme, cease to apply to the contents: s 66 (5).

UPDATE

1130 Transfer of contents to Secretary of State

TEXT AND NOTE 2--Now Pastoral Measure 1983 s 66(5). Such an agreement may also provide for acquisition and preservation by the Historic Buildings and Monuments Commission for England: 1983 Measure s 66(5); National Heritage Act 1983 s 33(3), Sch 4 para 12. Where the Secretary of State has under this provision acquired for their preservation the contents of a redundant building, or part of one, the Commission may undertake, in any agreement made under 1983 Measure s 66(6) (see PARA 1129) in relation to the building or part, the preservation of the contents on the Secretary of State's behalf: *ibid* s 66(8); National Heritage Act 1983 s 33(3), Sch 4 para 12.

NOTE 2--1969 Act s 3 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(v) Restoration to Use/1131. Restoration of redundant buildings.

(v) Restoration to Use

1131. Restoration of redundant buildings.

A pastoral scheme¹ may provide that a redundant building which is vested in the Redundant Churches Fund², the diocesan board of finance³ or the Church Commissioners is to be restored to use as a church⁴ or part of a church⁵. The scheme may further provide (1) for designating the church as a parish church or chapel of ease⁶; (2) for vesting the building, with or without any land vested with it, in the incumbent of the benefice⁷ in the area of which is situated or in another person specified in the scheme⁸; (3) for transitional, supplementary or consequential matters⁹; and (4) for revoking the declaration of redundancy and revoking or amending any provisions in the pastoral scheme or redundancy scheme in relation to the building¹⁰.

1 As to pastoral schemes, see PARA 856 et seq ante.

2 As to this fund, see PARA 1137 post.

3 For the meaning of 'diocesan board of finance', see PARA 1124 note 3 ante.

4 For the meaning of 'church', see PARA 865 note 1 ante.

5 Pastoral Measure 1968, s 58.

6 Ibid s 58 (a).

7 For the meaning of 'benefice', see PARA 768 note 1 ante.

8 Pastoral Measure 1968, s 58 (b).

9 Ibid s 58 (c).

10 Ibid s 58 (d).

UPDATE

1131 Restoration of redundant buildings

TEXT AND NOTES--These provisions now apply to a redundant building or part of such a building: Pastoral Measure 1983 s 58.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(v) Restoration to Use/1132. Buildings vested in the Secretary of State.

1132. Buildings vested in the Secretary of State.

A pastoral scheme¹ may provide², with the consent of the Secretary of State, for restoring to use as a church³ or part of a church any redundant building or part of a building acquired by the Secretary of State under the power⁴ to acquire redundant buildings, whereupon the provisions in the foregoing paragraph apply to any such building and other land acquired by him⁵.

1 As to pastoral schemes, see PARA 856 et seq ante.

2 Ie under the provisions of the Pastoral Measure 1968, s 58: see PARA 1131 ante.

3 For the meaning of 'church', see PARA 865 note 1 ante.

4 Ie under the Pastoral Measure 1968, s 66 (1): see PARA 1129 ante.

5 Ibid s 66 (3); Redundant Churches and other Religious Buildings Act 1969, s 3; Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681.

UPDATE

1132 Buildings vested in the Secretary of State

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

TEXT AND NOTE 5--These provisions apply to acquisitions by the Historic Buildings and Monuments Commission for England as they apply to acquisitions by the Secretary of State: *ibid* s 66(3); National Heritage Act 1983 s 33(3), Sch 4 para 12. Before giving his consent under the 1983 Measure s 66(3) in relation to a building or part of one situated in England, the Secretary of State must consult with the Commission: s 66(3A); National Heritage Act 1983 s 33(3), Sch 4 para 12.

NOTE 5--1969 Act s 3 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vi) Charity Schemes for Places of Worship/1133. Consecrated chapels.

(vi) Charity Schemes for Places of Worship

1133. Consecrated chapels.

The power of the court and the Charity Commissioners¹ to make schemes with respect to charities² extends to consecrated chapels belonging to charities³ which are no longer needed for the purposes of the charity⁴. Such a scheme may provide (1) for the demolition of the chapel and the disposal of materials⁵; (2) for the sale or disposal of the chapel or its site and the application of the proceeds⁶; (3) for the appropriation of the chapel to uses specified or described in the scheme⁷; and (4) for supplementary or incidental matters⁸.

1 le under the Charities Act 1960. See CHARITIES vol 8 (2010) PARA 187 et seq.

2 'Charity' is defined by reference to the Charities Act 1960, s 45: see the Pastoral Measure 1968, s 90 (1).

3 A consecrated chapel held on charitable trusts for the purpose of religious worship by the beneficiaries and staff of a charity and not by the general public is deemed to belong to that charity: s 55 (4).

4 Ibid s 55 (1). Consecrated chapels were formerly excluded from the power to make schemes by the Charities Act 1960, s 45 (2) (b), but the Pastoral Measure 1968, s 55 (1), expressly states that this section does not prevent the making of a scheme. Where a scheme is made under s 55 the bishop (defined in PARA 813 note 3 ante) may order that ss 61 (1), 65 (see PARAS 1076, 1128 ante) are to apply to the chapel, and the scheme, so far as it relates to the chapel, does not have effect unless and until such an order is made or the bishop directs that the scheme may have effect without such an order: s 55 (2).

5 Ibid s 55 (3) (a).

6 Ibid s 55 (3) (b).

7 Ibid s 55 (3) (c).

8 Ibid s 55 (3) (d).

UPDATE

1133 Consecrated chapels

TEXT AND NOTES--1968 Measure consolidated in the Pastoral Measure 1983: see table PARA 1435A.

NOTE 2--Now refers to the Charities Act 1993 s 96: 1983 Measure s 87(1) (amended by the Charities Act 1993 Sch 6 para 18(4)).

NOTE 4--1960 Act s 45(2) now Charities Act 1993 s 96(2): see CHARITIES.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vi) Charity Schemes for Places of Worship/1134. Places of Public religious worship.

1134. Places of Public religious worship.

If a building, which is a place of public religious worship and is held by or in trust for a charity but is not a church subject to the provisions of the Pastoral Measure 1968¹, is no longer required for use as a place of public religious worship and the Secretary of State is willing to enter into an agreement for the acquisition by him, under his statutory powers², of the building or part of it by way of gift or for less than full consideration, but the persons in whom the building is vested do not have the powers to carry out the agreement, the court may establish a scheme³ for the making and carrying out of the agreement⁴. The scheme may also provide for the acquisition by the Secretary of State of other land, held by or in trust for the charity and comprising or contiguous or adjacent to the building, and of objects ordinarily kept in the building⁴.

So long as a building so required remains vested in the Secretary of State, any property of a charity applicable for the repair and maintenance of the building or for the provision or maintenance of the building or for the provision or maintenance of objects in the building continues to be applicable for that purpose⁵.

1 As to churches subject to the provisions of the Pastoral Measure 1968, see PARA 865 note 1 ante.

2 I.e. under the Historic Buildings and Ancient Monuments Act 1953, s 5: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1072.

3 I.e. under the court's jurisdiction with respect to charities: see CHARITIES vol 8 (2010) PARA 181 et seq.

4 Redundant Churches and other Religious Buildings Act 1969, s 4 (1); Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. The scheme may provide for conferring on the Secretary of State rights of way over any land held by or in trust for the charity and rights of way hitherto enjoyed by persons attending services: Redundant Churches and other Religious Buildings Act 1969, s 4 (2); Secretary of State for the Environment Order 1970. The scheme may also provide for the making of an application to the Secretary of State for the restoration of the building to use as a place of public religious worship, and the Charity Commissioners may, at the Secretary of State's request, make a scheme under the Charities Act 1960, s 18, for the restoration of the building to such use and, if the charity has ceased to exist, for the constitution of a charity by or in trust for whom the building on its restoration is to be held: Redundant Churches and other Religious Buildings Act 1969, s 4 (3); Secretary of State for the Environment Order 1970; Education Act 1973, s 1 (4), (5), Sch. 2, Part III. The provisions of the Charities Act 1960, s 18 (except s 18 (6)) and s 21 have effect in relation to a scheme made under the Redundant Churches and other Religious Buildings Act 1969, s 4 (1): s 4 (5); Education Act 1973, s 1 (4), (5), Sch. 2, Part III. Nothing in the Redundant Churches and other Religious Buildings Act 1969 prejudices any power of the court or the Charity Commissioners to establish a scheme for the administration of a charity or the commissioners' power under the Charities Act 1960, s 23, to authorise dealings with trust property: Redundant Churches and other Religious Buildings Act 1969, s 7 (2).

5 Ibid s 5 (1); Secretary of State for the Environment Order 1970. Where part of the building is acquired, property continues to be applicable for such purposes in respect of that part to such extent as the scheme may provide: Redundant Churches and other Religious Buildings Act 1969, s 5 (2).

UPDATE

1134 Places of public religious worship

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Now Pastoral Measure 1983.

NOTE 2--1953 Act s 5 now Planning (Listed Buildings and Conservation Areas) Act 1990 s 53(2), (3).

TEXT AND NOTE 4--Redundant Churches and other Religious Buildings Act 1969 s 4 substituted: Charities Act 1992 s 49, Sch 5.

NOTE 4--Charities Act 1960 ss 18, 21 amended: Charities Act 1992 ss 13, 47, Sch 3.

See also Charities Act 1960 s 23A; Charities Act 1993 s 27 (power to authorise certain ex gratia payments etc). For 'Charities Act 1960 s 23' read 'Charities Act 1993 s 26': 1969 Act s 7(2), amended by the Charities Act 1993 Sch 6 para 10(6).

TEXT AND NOTE 5--Redundant Churches and other Religious Buildings Act 1969 s 5 substituted: Charities Act 1992 s 49, Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vii) Statutory Bodies/1135. Advisory Board for Redundant Churches.

(vii) Statutory Bodies

1135. Advisory Board for Redundant Churches.

The Advisory Board for Redundant Churches has been set up, consisting of a chairman and between six and ten other members, all appointed by the two archbishops jointly after consultation with the Prime Minister¹. The board must give information and advice to the Church Commissioners on or concerning the historic and architectural qualities of any church² or part of a church as respects which the question arises whether it ought to be declared redundant or as to its use, demolition or preservation on or in the event of its being declared redundant³. Before advising on the question whether a church or part of a church ought to be demolished or preserved the board must consult the Redundant Churches Fund⁴ as to the money available for its preservation⁵.

The Church Commissioners may make grants out of their general fund⁶ in respect of the board's expenses⁷. The board may appoint a secretary and such other officers and agents as it considers necessary⁸ and must report annually to the two archbishops⁹.

1 Pastoral Measure 1968, s 42 (1). Neither the chairman nor any other member may be a member of the Board of Governors of the Church Commissioners, of a committee appointed by that board (eg the committee under s 44: see PARA 1138 post), of the General Purposes Committee or Assets Committee (see PARAS 368, 381-383 ante) or of any diocesan pastoral committee (see PARA 521 ante): s 42 (2), Sch. 5 para 1. They hold office in accordance with the terms of their appointment and, on ceasing to hold office, are eligible for reappointment: Sch. 5 para 2. The advisory board's quorum is three or such greater number as it determines; it may regulate its own procedure and may act notwithstanding a vacancy among its members: Sch. 5 paras 3, 4.

2 For the meaning of 'church', see PARA 865 note 1 ante.

3 Pastoral Measure 1968, s 42 (3).

4 As to this fund, see PARA 1137 post.

5 Pastoral Measure 1968, s 42 (6).

6 As to the commissioners' general fund, see PARA 1234 post.

7 Pastoral Measure 1968, s 42 (4).

8 Ibid s 42 (5). The appointments are subject to the commissioners' approval as respects numbers and terms of service or appointment: s 42 (5).

9 Ibid s 42 (7). Copies of the report must be sent to the commissioners and laid before the General Synod: s 42 (7); Synodical Government Measure 1969, s 2 (2).

UPDATE

1135 Advisory Board for Redundant Churches

NOTES--Now Pastoral Measure 1983 s 41, Sch 5 paras 1-4 (repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

TEXT AND NOTE 3--Now the board must give information and advice to the commissioners on or concerning the historic and archaeological interest and architectural quality of

any church or part of a church to which these provisions apply, its value as part of the landscape and its overall importance: 1983 Measure s 42(3).

These provisions apply to a church or part of a church as respects which the question arises whether it ought to be declared redundant, or as respects which questions arise as to its use, demolition or preservation on or in the event of its being declared redundant, and references to a church include references to the curtilage and contents of the church and to any churchyard or burial ground annexed to it: *ibid* s 42(4).

TEXT AND NOTE 5--Now before advising on the question whether a church or part of a church ought to be preserved, the board must consult the Churches Conservation Trust (see PARA 1137) as to the estimated cost of repairing that church or part immediately and maintaining it thereafter and as to the money available for those purposes: *ibid* s 42(7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vii) Statutory Bodies/1136. Diocesan redundant churches uses committee.

1136. Diocesan redundant churches uses committee.

A committee for every diocese must be set up, called the diocesan redundant churches uses committee¹, whose duty is to make every endeavour to find suitable alternative uses for the redundant buildings in the diocese². When the committee has found a suitable use or suitable uses for a redundant building or has decided that no such use will be found, it must report to the Church Commissioners³, who may require a committee to report in respect of a particular redundant building³, and may also require it to refer the case to the commissioners, whereupon the duty of finding a suitable use or suitable use for the building passes to them⁴. Every committee must make an annual report to the commissioners⁵.

1 Pastoral Measure 1968, s 43 (1). A chairman must be appointed by the bishop; one member must be appointed by the diocesan board of finance; one by the pastoral committee; one by the diocesan advisory committee for the care of churches (with the approval of the Council for Places of Worship); and up to three other members must be appointed by the bishop, at least one of whom must be a member of the diocesan synod: s 43 (2), Sch. 5 para 5; Synodical Government Measure 1969, s 4 (7). The bishop may appoint or the committee may co-opt other members, and any of the above bodies may appoint alternate members: Pastoral Measure 1968, Sch. 5 paras 7, 8. The chairman and other members hold office for five years but are then eligible for reappointment: Sch. 5 para 6. The committee determines its own quorum; it regulates its own procedure and may act notwithstanding any vacancy among its members: Sch. 5 paras 10, 11. The diocesan board of finance appoints the committee's secretary: Sch. 5 para 9. For the meaning of 'bishop', see PARA 813 note 3 ante.

2 Ibid s 43 (3). If it appears to the bishop that there are not likely to be any redundant buildings in his diocese he may postpone the constitution of the committee or may suspend its proceedings: s 43 (7).

3 Ibid s 43 (4).

4 Ibid s 43 (6). The commissioners must consult with the committee in discharging this duty: s 43 (6).

5 Ibid s 43 (5).

UPDATE

1136 Diocesan redundant churches uses committee

NOTES--Now Pastoral Measure 1983 s 42 (substituted by the Dioceses, Pastoral and Mission Measure 2007 s 41).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vii) Statutory Bodies/1137. Redundant Churches Fund.

1137. Redundant Churches Fund.

A body corporate known as the Redundant Churches Fund has been set up, with perpetual succession and a common seal¹, consisting of a chairman and between four and six other members². Its object is the preservation, in the interests of the nation and the Church of England, of churches³ and parts of churches of historic or architectural interest, and their contents, vested in the fund under the Pastoral Measure 1968⁴.

The fund has (1) power to hold and manage all churches and other property vested in the fund⁵ and to maintain and repair such property⁶; (2) to permit the occasional use of property vested in the fund for purposes considered by it to be suitable⁷; (3) to charge entrance fees for admission to such property, to raise money by public subscription and appeals and to accept gifts and bequests⁸; (4) to administer and invest sums in its hands⁹; and (5) to delegate functions to local trustees or bodies¹⁰. The fund may contribute to the cost of the care and maintenance of a church vested in the diocesan board of finance under the Pastoral Measure 1968 pending the making of a redundancy scheme¹¹.

Expenditure of the fund must be defrayed out of sums in its hands¹². The Church Commissioners may make grants out of their general fund in respect of the fund's expenditure¹³. The Secretary of State may, with Treasury approval, make grants out of money provided by Parliament in respect of expenditure incurred or to be incurred by the fund¹⁴.

The fund must annually transmit copies of its accounts to the commissioners and to the Advisory Board for Redundant Churches¹⁵. The commissioners must transmit copies of the accounts and the report to the Home Secretary and the secretary of the General Synod, and copies must be laid before Parliament and the General Synod¹⁶.

1 Pastoral Measure 1968, s 45 (1).

2 Ibid s 45 (2). The appointments are made by the Queen after taking the advice of the two archbishops through the Prime Minister: s 45 (2). The members hold office in accordance with the terms of their appointment and on ceasing to hold office are eligible for reappointment: s 45 (3), Sch. 5 para 12. The quorum is three or such greater number as the fund determines; the fund regulates its own procedure and may act notwithstanding any vacancy among its members: Sch. 5 paras 13, 14. It may appoint a secretary and such other officers and agents as it considers necessary for the proper discharge of its functions: s 45 (5) (e).

3 For the meaning of 'church', see PARA 865 note 1 ante.

4 Pastoral Measure 1968, s 45 (4). See PARAS 1125, 1127 ante. As to the transfer to the fund of a certain proportion of the proceeds of the sale etc. of redundant churches, see PARA 1123 ante.

5 Ie under ibid Part III (ss. 42-66): see PARAS 1125, 1127 ante.

6 Ibid s 45 (5) (a).

7 Ibid s 45 (5) (b). The fund may permit such occasional worship in a church or part of a church vested in the fund as the bishop may authorise, and the incumbent's consent is not required: s 45 (7).

8 Ibid s 45 (5) (c).

9 Ibid s 45 (5) (d). The powers of investment are those conferred by the general law on trustees of trust funds, and also include power to invest in accordance with the scheme set out in the Church Funds Investment Measure 1958, Schedule (see PARA 1249 post): Pastoral Measure 1968, s 45 (6).

10 Ibid s 45 (5) (f).

11 Ibid s 45 (8). As to interim vesting, see PARA 1124 ante.

12 Ibid s 45 (9). The fund must keep the Advisory Board for Redundant Churches and the Church Commissioners informed of its financial position: s 45 (9).

13 Ibid s 45 (10). As to the commissioners' general fund, see PARA 1234 post. The total amount of the grants in the initial period of five years from 1st April 1969 (ie the date of commencement of the Pastoral Measure 1968) or in any subsequent five year period must not exceed £200,000, although the commissioners may vary this figure for subsequent periods: s 45 (10) proviso, 53 (1) (a), (2). See the Payment to Redundant Churches Fund Order 1974, S.I. 1974 No. 306, art. 1, which substitutes the figure of £700,000 for the period 1st April 1974 to 31st March 1976. For conditions as to payment of the grant, see art. 2.

14 Redundant Churches and other Religious Buildings Act 1969, s 1 (1); Secretary of State for the Environment Order 1970, S.I. 1970 No. 1681. The grants may be made in the period from 16th May 1969 to 31st March 1973 and in such later periods as may be specified by the Secretary of State by order made with the Treasury's approval: Redundant Churches and other Religious Buildings Act 1969, s 1 (1); Secretary of State for the Environment Order 1970. The aggregate amount in the initial period must not exceed £200,000 and the aggregate amount in any subsequent period must not exceed the amount specified in the order fixing the period: Redundant Churches and other Religious Buildings Act 1969, s 1 (2). An order under s 1 (1) may be revoked or varied by subsequent order: s 1 (3). The draft of any order must be approved by resolution of the House of Commons: s 1 (4).

15 Pastoral Measure 1968, s 45 (11). As to the advisory board, see PARA 1135 ante.

16 Ibid s 45 (12); Synodical Government Measure 1969, s 2 (2).

UPDATE

1137 [Churches Conservation Trust]

TEXT AND NOTES--The Redundant Churches Fund has been renamed the Churches Conservation Trust: Pastoral (Amendment) Measure 1994 s 13. In the Pastoral Measure 1983 s 44 any reference to the Advisory Board is to be construed as a reference to the Church Buildings Council: Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 7(a).

NOTES--Now 1983 Measure s 44, Sch 5 paras 13-15 (s 44 amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 11; Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 7).

NOTE 2--Employees of the Churches Conservation Trust now qualify for a civil service pension: Superannuation Act 1972 Sch 1, amended by the Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) (No 3) Order 1998, SI 1998/3030; and see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

TEXT AND NOTE 4--For 'or architectural interest', read 'and archaeological interest or architectural quality': 1983 Measure s 44(4).

TEXT AND NOTES 6-11--Where the freehold interest in a redundant church or any land annexed or belonging thereto has been disposed of under a redundancy scheme or pastoral scheme to which the Pastoral Measure 1983 s 46 or 47 applies and the owner of that freehold interest is unable for any reason to use the redundant church for the use specified in the scheme including any use allowed under any covenant imposed in relation to the scheme under s 62 and is willing to dispose of the freehold interest by way of gift, the Churches Conservation Trust may, with the prior consent in writing of the Commissioners, acquire the freehold by way of gift but, before consenting to such an acquisition, the Commissioners must (1) consult the bishop and the Advisory Board; (2) be satisfied that the Churches Conservation Trust will have the resources to meet the cost of maintaining the redundant church: s 44(5A) (s 44(5A), (5B) added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 11). The

Commissioners must seal the deed of transfer of any land acquired under the 1983 s 44(5A): s 44(5B) (as so added).

TEXT AND NOTE 6--Now the trust also has power to acquire property (including rights of way) where it considers that to do so would assist it in the exercise of its powers under head (1): 1983 Measure s 44(5)(aa); Church of England (Miscellaneous Provisions) Measure 1995 s 11(b).

TEXT AND NOTE 7--Now (2) to permit the occasional use of property, or to grant a licence permitting the temporary use of property, vested in the trust for purposes considered by the trust to be suitable and, in any case, either without charge or on payment of a fee; (2A) to let any property vested in the trust on such terms (including terms as to the purposes for which it may be used) as the Church Commissioners may approve, after consultation with the bishop and the Advisory Board for redundant Churches, being terms which the commissioners consider reasonable and proper having regard to all the circumstances; (2B) in respect of any property which the trust has let or is proposing to let under (2A) above, to carry out such works as the trust considers desirable, after consultation with the advisory board: *ibid* s 44(5)(b), (bb), (bbb); Pastoral (Amendment) Measure 1994 s 2(2).

NOTE 7--Now the powers conferred on the trust under heads (2) and (2A) may be exercised so as to permit the use of a church or part of a church vested in the trust for such worship (including worship by persons belonging to other Christian churches) as may be authorised by the bishop after consulting the incumbent or priest in charge of the benefice in the area of which the church is situated: 1983 Measure s 44(7); 1994 Measure s 2(3). The terms of a lease granted under head (2A) in respect of any property may provide that the property must not be subject to the legal effects of consecration during the currency of the lease, notwithstanding the provisions of the 1983 Measure s 61 (see PARA 1076): 1983 Measure s 44(7A); 1994 Measure s 2(4). Where any such property has been let under head (2A) and the terms of the lease provide to the effect that no alteration may be made thereto without the approval of the trust, its approval can only be given after consultation with the advisory board: 1983 Measure s 44(7B); 1994 Measure s 2(4). A statement in a document signed by the secretary or other duly authorised officer of the Church Commissioners that the commissioners have approved the terms of any lease granted under head (2A) which is specified in the document is conclusive evidence that those terms have been so approved: 1983 Measure s 44(7C); 1994 Measure s 2(4). As a condition of giving their approval to the terms of any lease under head (2A) the commissioners may require the trust to include in the lease such provisions, if any, as appear to them to be necessary to give effect to those terms: 1983 Measure s 44(7D); 1994 Measure s 2(4).

NOTE 8--In head (3), for 'such property' read 'property vested in the trust': 1983 Measure s 44(5)(c); 1994 Measure s 2(2). Add (3A) to assist, on payment of a fee, in the management of any place of Christian religious worship (not being a church or part of a church) which is vested in any body entrusted with functions similar to those of the trust: 1983 Measure s 44(5)(cc); 1994 Measure s 2(2).

NOTE 12--The trust must now give to the commissioners and to the advisory board such information and advice as they may require about (i) the trust's financial position generally, and (ii) the estimated cost of repairing and thereafter maintaining any church or part of a church which is proposed to be vested in the trust or which the commissioners consider is likely to be proposed for vesting in the trust: 1983 Measure s 44(9A); 1994 Measure s 2(5), (6). 1983 Measure s 44(9B), (9C) added: Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 7(a).

NOTE 13--The total amount of grants which may be made during the period 1 April 2009-31 March 2012 is £4,160,000: Payments to the Churches Conservation Trust

Order 2008, SI 2008/1968. For 'five year period' read 'funding period' (see PARA 1123): 1983 Measure s 44(10); 1994 Measure s 2(7).

NOTE 14--The aggregate amount of grants which may be made during the period 1 April 2008-31 March 2011 is £9,485,418: Grants to the Churches Conservation Trust Order 2008, SI 2008/842.

NOTE 15--1983 Measure s 44(11) now as amended by 1994 Measure s 2(8).

TEXT AND NOTE 16--Replaced. The Churches Conservation Trust must transmit copies of the accounts and report to the Secretary of State and the Secretary of State must lay copies thereof before each House of Parliament and the Commissioners must transmit copies of the said accounts and report to the Secretary General of the General Synod and the Secretary General must lay copies thereof before the General Synod: Pastoral Measure 1983 s 44(12) (substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 11).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(3) REDUNDANT CHURCHES/(vii) Statutory Bodies/1138. Committee appointed by Church Commissioners.

1138. Committee appointed by Church Commissioners.

The Board of Governors of the Church Commissioners¹ must appoint a committee of the board, which may include persons who are not commissioners, for the purpose of exercising on the commissioners' behalf such functions as the board may assign to it relating to redundant buildings and the preparation of redundancy schemes².

¹ As to the Board of Governors, see PARA 368 ante.

² Pastoral Measure 1968, s 44 (1). The functions include those under s 43 (see PARA 1136 ante); s 44 (1). The Church Commissioners Measure 1947 applies to the committee as to other committees and the commissioners may pay a salary to one of the committee's members: Pastoral Measure 1968, s 44 (2).

UPDATE

1138 Committee appointed by Church Commissioners

TEXT AND NOTE 2--Words 'which may include persons who are not commissioners' repealed: Pastoral (Amendment) Measure 1982 s 32. Now commissioners must constitute a majority of the members of the committee but, subject to that, the committee may include persons who are not commissioners: Pastoral Measure 1983 s 43(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1139. Meaning of 'glebe' and 'parsonage house'.

(4) PROPERTY BELONGING TO BENEFICES

(i) Acquisition of Residence and Glebe

1139. Meaning of 'glebe' and 'parsonage house'.

The glebe of a benefice¹ includes all land of any kind, houses or other buildings forming part of its endowments but does not include the parsonage house and grounds occupied with it². A parsonage house is a house which belongs to or is parcel of the parsonage, namely of the endowments of the benefice³.

The house and glebe are both comprehended under the word 'manse'⁴. The parsonage house⁵ and glebe are owned⁶ by the incumbent as a corporation sole for the benefit of himself⁷ and his successors in the incumbency, and he is entitled to use them for his own enjoyment or profit so far as that use is consistent with their due preservation for the use of his successors⁸.

1 As to the meaning of 'benefice', see PARA 768 ante.

2 Cf. 2 Burn's Ecclesiastical Law (4th Edn) 297. 'Glebe land' includes any manor, land or tenement, forming the endowment or part of the endowment of a benefice: Glebe Lands Act 1888, s 12. A gift of land in trust to pay the income to an incumbent so long as no new pew rents are charged is not a gift of glebe: *Re Randell, Randell v Dixon* (1888) 57 LJ Ch 899. For the meaning of 'glebe building', see the Repair of Benefice Buildings Measure 1972, s 31 (1); and PARA 1165 note 3 post.

3 'Parsonage' in legal parlance means the various properties which constitute the endowments of the benefice. A parsonage or rectory is a certain portion of land, tithes and offerings established by law for the maintenance of the minister having the cure of souls, within the parish where he is rector or patron, and properly comprehends the whole of the parish church with everything under its jurisdiction, its estates, tithes and all its produce, in other words the benefice: see Spelman's Glossary; *Re Alms Corn Charity, Charity Comrs v Bode* [1901] 2 Ch 750 at 758. For the meaning of 'parsonage house', see the Repair of Benefice Buildings Measure 1972, s 31 (1), and PARA 1165 note 2 post.

4 2 Burn's Ecclesiastical Law (4th Edn) 297.

5 Where the Church Commissioners acquire or build a benefice house not within the parish, but so near as to be convenient and suitable for a residence, the house when approved by the bishop is to be deemed the house of residence: Pluralities Act 1838, s 34; Church Commissioners Measure 1947, s 18 (2).

6 The nature of the estate of the incumbent is described as a fee simple qualified: Co Litt 341.

7 Where in fixing a price for glebe land a sum has been allowed in respect of inconvenience or annoyance to the incumbent, it may be paid out to him: *Re East Lincolnshire Rly Co, ex parte Rector of Little Steeping* (1848) 5 Ry & Can Cas 207; *Re Saunderton Glebe Lands, ex parte Rector of Saunderton* [1903] 1 Ch 480; and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 683.

8 Purchase money arising on the sale of part of the glebe under the Lands Clauses Acts may be paid out of court for application in keeping the house in repair: *Ex parte Rector of Claypole* (1873) LR 16 Eq 574; and see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 669, 679. As to leasing, see PARA 1153 et seq post.

UPDATE

1139 Meaning of 'glebe' and 'parsonage house'

TEXT AND NOTES--Provision is made for the transfer of glebe land to diocesan boards of finance; see Endowments and Glebe Measure 1976 s 15 (see PARA 1139A). The diocesan board of finance may require an incumbent or sequestrators to furnish information as to glebe land and certain leases: ss 16, 31. Each board must prepare a scheme for the management of glebe land: s 19(2)-(4). A scheme made under s 19 may provide for the setting up of a wholly owned subsidiary or subsidiaries of the diocesan board of finance: s 19A(1) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 5 para 4). Provision is also made for the transfer of certain parsonage land to the board. Where the board is of the opinion that any parsonage land belonging to a benefice and, in particular, a parsonage house or any excluded part of a parsonage house is not necessary for the convenient occupation of the incumbent or is not required as the residence house of the benefice it must so notify the parochial church council and the incumbent or any sequestrators concerned and, in the case of a benefice in respect of which a team ministry is established, every member of the team who may within one month following such notification, make written representations to the Commissioners with respect to the proposed transfer: 1976 Measure s 32(1) (s 32(1), (2) now s 32(1)-(2A), substituted by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 5 para 9(a), s 32(1), (2) amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 3 para 5). After considering any such representations the commissioners must notify board, the parochial church council and the incumbent or sequestrators and every member of the team ministry of their decision and reasons with respect to the representation: 1976 Measure s 32(2) (as so substituted and amended). If no such representations are made within the said period of one month or the commissioners decide that the proposed transfer should take place notwithstanding any representations, the bishop of the diocese concerned may by order under his seal provide for the transfer to the board on such date as may be specified in the order of the land in question: s 32(2A) (as so substituted).

'Parsonage land' means any of the following: (a) a parsonage house, (b) any excluded part of a parsonage house, (c) any building, part of a building or land which an incumbent has acquired or agreed to acquire as a parsonage house or for the site of such a house, (d) any building, part of a building or land vested in an incumbent (when the benefice is full), being a building or land which in opinion of the Diocesan Board of Finance should be retained for use as a parsonage house or as the site for one, (e) any parsonage house or part of one which ceases to be, or to be part of, such a house by virtue of a pastoral scheme or order and for which no provision for its transfer is made, (f) any parsonage house or part of one which has ceased to be, or to be part of, such a house otherwise than by virtue of a pastoral scheme or order and in relation to which the commissioners' consent for its sale under the Parsonages Measure 1938 has been given or is not required by virtue of the 1938 Measure s 1(3A): 1976 Measure s 45(1) (amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 3 para 6(b)). An excluded part of a parsonage house is any part which by reason of the bishop's certificate under the 1938 Measure s 11, is to be deemed not to form part of it: 1976 Measure s 45(1).

NOTE 2--Definitions repealed: 1976 Measure Sch 8; Order of the Church Commissioners dated 11 August 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1139A. Transfer of glebe land.

1139A. Transfer of glebe land.

Any glebe land which immediately before 1 April 1978 is, or if the benefice were full would be, vested in right of his benefice in the incumbent of any benefice vests on that day in the diocesan board of finance without any conveyance or other assurance¹. A board may acquire land to be held as part of the diocesan glebe land², and may appropriate for use as such land any land vested in them³.

The diocesan glebe land is to be held, managed and dealt with by the board for the benefit of the diocesan stipends fund⁴.

A board may with the consent of the Church Commissioners sell, exchange, lease, mortgage or otherwise deal with any diocesan glebe land⁵. The proceeds of, or the capital money arising from, any sale, exchange or other dealing with diocesan glebe land, and any other capital payment received in respect of such land, must be paid to the board and allocated by the board to the capital account of the diocesan stipends fund⁶. All rents or other periodical payments in the nature of income received in respect of the diocesan glebe land must be paid to the board and allocated to the income account of the fund⁷.

Diocesan boards of finance must keep diocesan glebe land income and minerals accounts⁸ and must keep the commissioners informed of certain matters affecting diocesan glebe land⁹.

1 Endowments and Glebe Measure 1976 s 15(1); Order of the Church Commissioners dated 11 August 1977. It is freed and discharged from any previously existing trusts and charges in favour of any other benefice and any previously existing charge to which s 37(3) (outstanding loans for the provision of parsonage houses, etc, to be secured on the parsonage house instead of the glebe) relates: s 15(1). In other respects it vests (a) subject to, and with the benefit of, any other previously existing trusts and charges, any previously existing tenancies and any covenants, conditions, agreements, easements and rights to which the land is subject and of which it has the benefit immediately before the above date, and (b) subject to all such rights in the nature of easements as are necessary for the reasonable enjoyment of any parsonage land belonging to the benefice or any church land, being rights which were formerly exercisable by the incumbent in right of his benefice: s 15(1). Rights referred to in (b), take effect as legal easements appurtenant to the land referred to: s 15(2). Rights in the nature of easements over parsonage land belonging to the benefice or any church land which are necessary for the reasonable enjoyment of land vested under s 15(1) in the board, being rights which were formerly exercisable by the incumbent in right of his benefice, also vest in the board: s 15(3).

Any dispute between a board and an incumbent or sequestrators is decided by the Church Commissioners: s 15(4), (5).

2 Ibid s 18(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 5 para 3(a)).

3 1976 Measure s 18(2) (amended by the 2000 Measure Sch 5 para 3(b)). For the consents required see the 1976 Measure s 18(2), (3).

4 Ibid s 19(1). Notwithstanding this provision, a board may, in the exercise of its powers under New Parishes Measure 1943 s 14, and with the Church Commissioners' consent, grant to the commissioners (i) any building on diocesan glebe land which consists of a church or part of a church or is fit to be used as one or to be converted into one, (ii) any such land as a site for a new church or for a church to be substituted for an existing one or for enlarging the site of an existing one, (iii) any such land for providing a new or extending an existing churchyard or burial ground, (iv) any such building or land for, or for the extension of, a house of residence for an incumbent, (v) any such land required for providing access to or improving the amenities of any such church, etc.: s 23(1). With the commissioners' consent a board may appropriate any such building or land for use as a church hall, etc: s 23(2), (3); Church of England (Miscellaneous Provisions) Measure 1983 s 1(3); Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 14. A board may permit a person declared by the bishop to be engaged in the cure of souls within the diocese to reside in a dwelling house situated on the diocesan glebe land without payment of any rent: 1976 Measure s 24 (amended by the 1992 Measure Sch 3

para 15; and the Church of England (Miscellaneous Provisions) Measure 2005 Sch 3 para 3). 'Lay worker' means a person who has been admitted by a bishop as a lay worker of the Church of England and who has been licensed by a bishop to serve as such a worker: 1976 Measure s 45(1); 1992 Measure Sch 3 para 17.

5 1976 Measure s 20(1) (substituted by the 2000 Measure Sch 5 para 5(a)). Where the amenities of any land will be affected by the proposed transaction and the board or the commissioners think it necessary to do so in the interest of safeguarding those amenities they may, notwithstanding anything in the 1976 Measure s 19(1), include or require to be included such terms safeguarding those amenities as, having regard to all the circumstances, they consider reasonable and proper: 1976 Measure s 20(1) (s 20(1) as so substituted). An authorisation may in certain circumstances be suspended (s 20(3) (amended by the 2000 Measure Sch 5 para 5(c)) but such suspension may be cancelled in specified circumstances: 1976 Measure s 20(4). Any subsidiary of a board (see s 19A, PARA 1139) has, subject to the provisions of the scheme, the same powers and duties as the board with respect to holding, managing and dealing with such glebe land as may be specified in the scheme: s 19A(2) (added by the 2000 Measure Sch 5 para 4). The consent of the commissioners is not required for any disposition of land other than any such disposition as is specified in the 1976 Measure Sch 3: s 20(1A) (s 20(1A), (2D) added by the 2005 Measure Sch 3 para 2). 1976 Measure Sch 3 has effected notwithstanding its repeal: 2005 Measure Sch 3 para 8. Consent is also not required for a disposition of land to a subsidiary of the board: 1976 Measure s 20(2) (s 20(2)-(2C) substituted by the 2000 Measure Sch 5 para 5(b)). Consent is also not required where the proposed disposition is made to a person who is not a 'connected person' and certain requirements as to the obtaining of professional advice on the proposed disposition have been satisfied: see 1976 Measure s 20(2A)-(2C) (as so substituted). As to the meaning of 'connected person', see 1976 Measure s 20(12) (added by the 2000 Measure Sch 5 para 5(k)). Consent is also not required in relation to a disposition giving effect to the entitlement a tenant of any diocesan glebe land to an interest in the land: see the 1976 Measure s 20(2D) (as so added).

Before a diocesan board of finance seeks the consent of the commissioners under the 1976 Measure s 20(1) to a transaction specified in Sch 3 (except any transaction to which s 20(2D) applies) it must notify (1) the incumbent, or if the benefice is vacant, (i) the priest-in-charge, in the event of a priest-in-charge being appointed for the benefice during a suspension period declared in respect of the benefice under the Pastoral Measure 1983 s 67 or (ii) the churchwardens, in any other case; and (2) the parochial church council of that parish, stating that representations may be made: 1976 Measure s 20(5) (amended by the 1992 Measure Sch 3 para 13; the 2000 Measure Sch 5 para 5(d); and the 2005 Measure Sch 3 para 2). Where representations are made to the board under the 1976 Measure s 20(5), the board must forward a copy of the representations to the commissioners together with details of the proposed transaction and s 20(2A) does not apply to the transaction unless the commissioners, having considered the representations, direct that it does: s 20(6B) (added by the 2000 Measure Sch 5 para 5(e); and amended by the 2005 Measure Sch 3 para 2).

Where a transaction is in respect of diocesan glebe land situated in the area of a benefice for which a team ministry is established, the 1976 Measure s 20(5) has effect in relation to every vicar in the team ministry and, in the case of a house occupied by a member of the team, in relation to that member as it has effect in relation to the incumbent of the benefice: s 20(6A) (added by Team and Group Ministries Measure 1995 s 14). The bishop must also be notified in certain circumstances: 1976 Measure s 20(6) (amended by the 1992 Measure Sch 3 para 13). Before deciding whether to give their consent, the commissioners must consider any representations: 1976 Measure s 20(8) (s 20(8), (9) amended by the 2000 Measure Sch 5 para 5(g), (h); and the 2005 Measure Sch 3 para 2). As a condition of consent they may require provisions to be included in the conveyance, etc: 1976 Measure s 20(9) (as so amended).

Where a board has sold, exchanged or leased any diocesan glebe land and the document concerned contains a restrictive covenant imposed for the benefit of any church land or parsonage land, that covenant is enforceable by the board as if it were the owner of the land: 1976 Measure s 22.

6 Ibid s 25(1)-(3) (s 25 substituted by the 2000 Measure Sch 5 para 6).

7 1976 Measure s 25(4) (s 25 as substituted: see NOTE 6).

8 Ibid s 26 (amended by the 2000 Measure Sch 5 para 7, Sch 8 Pt II; and the 2005 Measure Sch 3 para 4).

9 1976 Measure s 27 (amended by the 2000 Measure Sch 5 para 8).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1140. Provision of parsonage etc.

1140. Provision of parsonage etc.

Notwithstanding the rule that no church should be consecrated without the provision of a parsonage house and glebe¹, many of the clergy for want of proper habitations were compelled or induced to reside at a distance from their benefices², and to remedy this evil, as well as to provide for the acquisition of houses of residence where new parishes or ecclesiastical districts are formed, many facilities have been afforded by statute for the purpose of purchasing a house of residence, or purchasing a site and building a house of residence on it, or rebuilding or improving an existing house of residence. In addition to the facilities for acquiring sites already referred to in connection with the acquisition of sites for churches³, an incumbent or, during a vacancy, the bishop of the diocese, has power, with the consent of the Church Commissioners⁴, the parsonages board⁵, and (where the power is exercised by an incumbent) the bishop, to erect or purchase⁶ a house or purchase⁶ land for the site of a house or an orchard, garden and appurtenances or other land, such house, orchard, garden and appurtenances or any such land being respectively suitable for the residence and occupation of the incumbent⁷. Before exercising these powers of erecting or purchasing a house or purchasing land the incumbent or the bishop, as the case may be, must give the prescribed notice⁸ to the patron⁹ of the benefice and to the parochial church council¹⁰. The Church Commissioners must, before consenting to the exercise of the power, consider any objection raised within a period of twenty-one days commencing on the day after the notice is given, by the patron or council and, if satisfied that the objection ought not to prevent the exercise of this power, they must inform the objector of the reasons on which their conclusion is founded¹¹.

The total area of any land purchased, including the site of any house or other building, must not exceed 6 acres¹².

There is a similar power to improve any house erected or purchased under the foregoing power, any house acquired by way of exchange under the Parsonages Measure 1938 or any house forming part of the property of the benefice which it is proposed to constitute the residence house of the benefice¹³.

Where a house is erected, purchased, acquired by way of exchange or improved under the foregoing powers as the residence of an incumbent it is deemed and is taken to be such a residence as from the date on which the bishop so certifies¹⁴.

The parsonages board may advise the bishop that any of these powers should be exercised and, if requested by the incumbent and the bishop, or during a vacancy the bishop alone, may frame proposals for the exercise of any such powers¹⁵.

Land or buildings sold, purchased or exchanged under these powers are conveyed to the incumbent in his corporate capacity and in the case of a vacancy the conveyance is taken by the bishop in the name and on behalf of the incumbent in his corporate capacity¹⁶. The sealing of such a conveyance by the Church Commissioners is conclusive evidence that all requirements with respect to the transaction have been complied with¹⁷.

A house of residence may be provided by purchase or otherwise under a pastoral scheme or order¹⁸. A scheme of the diocesan synod may authorise the parsonages board to erect a parsonage house with the agreement of the persons concerned¹⁹.

1 See PARA 1054 ante.

- 2 See the Clergy Residences Repair Act 1776, preamble.
- 3 See PARA 1057 et seq ante.
- 4 As to the commissioners, see PARA 363 ante.
- 5 The parsonages board for the diocese is the successor to the diocesan dilapidations board: Repair of Benefice Buildings Measure 1972, s 29. As to parsonages boards, see PARA 520 ante.
- 6 'Purchase', in relation to land, includes the acceptance of any leasehold interest in that land: Parsonages Measure 1938, s 20; Church Property (Miscellaneous Provisions) Measure 1960, s 2 (2).
- 7 Parsonages Measure 1938, s 2 (1) (i), (2); Church Commissioners Measure 1947, ss 2, 18 (2); Repair of Benefice Buildings Measure 1972, s 29. For supplemental provision where the power is exercised by the bishop, see the Parsonages Measure 1938, s 2 (4). As to the exercise of the bishop's powers when he is disabled or when the see is vacant, see s 14. As to the giving of consent by the bishop and the parsonages board, see s 8, and the Rules made by Queen Anne's Bounty 1938, S.R. & O. 1938 No. 636, r 4, Schedule. For a shortened procedure, see the Parsonages Measure 1938, s 15 (1) (iii), and the Rules made by Queen Anne's Bounty 1938, r 8, Schedule. As to costs, charges and expenses, see the Parsonages Measure 1938, s 3 (3). Reference in the Rules made by Queen Anne's Bounty 1938 to the Parsonages Measure 1938 is to be construed as a reference to that Measure as amended by the Church Property (Miscellaneous Provisions) Measure 1960: s 28 (2).
- 8 As to service and for forms of notice, see the Rules made by Queen Anne's Bounty 1938, r 5, Schedule.
- 9 Where the bishop is patron, solely or alternately in right of his see, no notice to him in that capacity need be given: Parsonages Measure 1938, s 13. As to notice where the patronage of the benefice is in the Crown or part of the possessions of a duchy, see s 16; Pastoral Measure 1968, s 95, Sch. 9. Rights conferred by the Measure on patrons are exercisable by patrons who are Roman Catholics: see the Parsonages Measure 1938, s 19. See also the definition of 'patron' for the purposes of the Measure and the rules in the Rules made by Queen Anne's Bounty 1938, r 1. As to patrons who are subject to incapacity or cannot be found, see rr 2, 3.
- 10 Where there is no council notice is to be given to the churchwardens, who may exercise the powers of objection: Parsonages Measure 1938, s 12.
- 11 Ibid s 3 (1); Church Property (Miscellaneous Provisions) Measure 1960, s 3 (2).
- 12 Parsonages Measure 1938, s 2 (1) (i); Church Property (Miscellaneous Provisions) Measure 1960, s 2 (1).
- 13 Parsonages Measure 1938, s 2 (1) (ii); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule; see PARA 1162 post.
- 14 Parsonages Measure 1938, s 11 (1); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule; see PARA 1162 post. As to the form of the bishop's certificate, see the Rules made by Queen Anne's Bounty 1938, r 10, Schedule. As to where the residence house is divided, see the Parsonages Measure 1938, s 11 (2).
- 15 Ibid s 3 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 3 (2); Repair of Benefice Buildings Measure 1972, s 29.
- 16 Parsonages Measure 1938, s 9 (1) (i); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. As to registration in the diocesan registry, see the Parsonages Measure 1938, s 9 (3), and the Rules made by Queen Anne's Bounty 1938, r 9; Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule.
- 17 Parsonages Measure 1938, s 9 (2). The conveyance is exempt from stamp duty: s 18, which extends the Clergy Residences Repair Act 1776, s 18.
- 18 See the Pastoral Measure 1968, ss 31 (1) (b), 38 (i), and PARA 876 ante.
- 19 Repair of Benefice Buildings Measure 1972, s 15 (1) (b), applying the Parsonages Measure 1938, ss 1-2A (as amended): see PARA 1176 post.

UPDATE

1140 Provision of parsonage etc

TEXT AND NOTES--An incumbent or bishop proposing to exercise any of the powers conferred on him by the 1938 Measure s 2 (as amended) in respect of the residence house of a benefice for which a team ministry is established must, if the house is or is to be occupied by the incumbent, (1) keep every member of the team informed of matters arising from the proposal; (2) afford every member of the team an opportunity to express views thereon before taking any action to implement the proposal, and (3) have regard to those views before taking any such action: *ibid* s 3(4), added by Team and Group Ministries Measure 1995 s 8(4).

NOTE 2--Repealed; Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 4, 5--The parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1): see 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11), and PARA 520) is now required to provide the Church Commissioners with such information as they may require concerning transactions affecting property under the 1938 Measure: s 5(4) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 7(c)). As from a day to be appointed 1938 Measure s 5 substituted: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 5.

TEXT AND NOTE 7--Parsonages Measure 1938 s 2(1)(i) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 4. The consent of the Church Commissioners is not required where (a) none of the following is concerned in the transaction: the spouse, child, parent, grandparent, brother or sister of the incumbent or bishop or of a member, officer, agent or employee of the parish council or diocesan board of finance (Parsonages Measure 1938 ss 1(6), 2(2A) (s 1(6) amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 3; 1938 Measure s 2(2A), (2B) added by the 2000 Measure Sch 1 para 4)); and (b) the incumbent or bishop has obtained a surveyor's report, and is satisfied that the terms of the transaction are the best that could reasonably be obtained for the benefice (1938 Measure ss 1(6), 2(2B) (s 1(6) as amended; s 2(2B) as added).

NOTE 7--1938 Measure s 2(4) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 4. 1938 Measure s 14 repealed: Church of England (Miscellaneous Provisions) Measure 1976 Schedule Pt II. 1938 Measure s 15(1)(iii) amended: Patronage (Benefices) Measure 1986 Sch 4 para 6. As to the laying of rules made under the 1938 Measure s 15 before the General Synod, see s 15(5)-(7) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 10; 1938 Measure s 15(6) prospectively amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 9). 1938 Measure s 3(3) repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 6, Sch 8 Pt II. SR & O 1938/636 replaced by the Parsonages Measure Rules 2000, SI 2000/3171 (amended by SI 2007/862).

TEXT AND NOTES 9, 10--For 'patron' read 'registered patron' and for 'council' read 'councils of all parishes within the benefice': 1938 Measure s 3(1) (amended by the 1986 Measure Sch 4 para 3, Sch 5; and the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 6). As to the meaning of 'registered patron', see NOTE 9.

NOTE 9--For 'patron' read 'registered patron': 1938 Measure s 13 (amended by the Patronage (Benefices) Measure 1986 Sch 4 para 5). 'Registered patron' has the same meaning as in the 1986 Measure (see PARA 818A.1): 1938 Measure s 20; 1986 Measure Sch 4 para 8. 1938 Measure s 16 amended: 1986 Measure Sch 4 para 7. 1938 Measure s 19 repealed: 1986 Measure Sch 5. 1938 Rules r 1 revoked and rr 2, 3 amended: 1986 Measure Sch 5.

TEXT AND NOTES 10, 14--1938 Measure ss 11(1), 12 amended: Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 paras 6, 7.

TEXT AND NOTE 11--Replaced. If any objection is raised within the prescribed time by such patron or councils the power must not be exercised unless the commissioners have informed the patron or the councils, as the case may be, that they are satisfied that the objection ought not to prevent the exercise of the power, together with a statement of the reasons on which such conclusion is founded: 1938 Measure s 3(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 6).

TEXT AND NOTE 13--For 'under the foregoing power ... Parsonages Measure 1938' read 'or acquired as property of the benefice under any powers conferred by or under the Parsonages Measure 1938 or any other enactment': 1938 Measure s 2(1)(ii) (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 para 3).

TEXT AND NOTE 17--For 'the Church Commissioners' read 'the board': 1938 Measure s 9(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 9(a)). The 'board' is the parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1)): see the 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11), and PARA 520. A statement in a document signed by the secretary or other duly authorised officer of the commissioners that the commissioners have consented to the terms of any transaction under the 1938 Measure affecting property which is specified in the document is conclusive evidence that they have consented to those terms: s 9(2A) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 9(b)).

TEXT AND NOTE 18--See now Pastoral Measure 1983 ss 31(1), 37(1)(h) (see PARA 876).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1141. Loans for parsonage houses.

1141. Loans for parsonage houses.

Where there is no or insufficient money for the foregoing purposes¹ the incumbent or, during a vacancy, the bishop may, for the purpose of obtaining a loan from the Church Commissioners², exercise the powers of charging the revenues of the benefice exercisable by the incumbent under the Clergy Residences Repair Act 1776, and the Acts extending or amending that Act or any of them³. The same consents are necessary as for the provision of a parsonage house⁴.

The commissioners are empowered to lend money to the incumbent or the bishop, as the case may be, for any of the foregoing purposes⁵.

1 le for erecting or purchasing a house, purchasing land or improving a house under the Parsonages Measure 1938, s 2 (1) (i), (ii) (as amended); see PARA 1140 ante.

2 le as successors to Queen Anne's Bounty: see the Church Commissioners Measure 1947, ss 1, 2, and PARA 363 ante.

3 Parsonages Measure 1938, s 2 (1) (iv); Church Property (Miscellaneous Provisions) Measure 1960, s 14 (2). As to the Clergy Residences Repair Act 1776 and the Acts extending or amending it, see PARA 1146 post. The limitations imposed by those Acts on the amount of the loan or rate of interest do not apply to loans made thereunder by the commissioners: Church Property (Miscellaneous Provisions) Measure 1960, s 14 (1).

4 le the consent of the commissioners, the parsonages board, and (where the power is exercised by the incumbent) the bishop: Parsonages Measure 1938, s 2 (2). The parsonages board may advise that the power should be exercised: s 3 (2).

5 Ibid s 2 (3); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. This power extends to lending money for any of the purposes of the Parsonages Measure 1938: s 2 (3).

UPDATE

1141 Loans for parsonage houses

TEXT AND NOTES 1-3--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1142. Division and improvement of parsonages.

1142. Division and improvement of parsonages.

During a vacancy in a benefice the bishop may, with the consent of the Church Commissioners, the parsonages board¹ and the patron, authorise the sequestrators² of the benefice to divide the residence house of the benefice into two or more parts or to reduce its size in any other way, or to enlarge it or carry out improvements to it and its outbuildings, drive, paths and garden; and the sequestrators may enter upon the land for those purposes when authorised to carry out the work³. If the vacancy is filled before the work is completed the new incumbent must, to the extent of money specially applicable to or lent by the commissioners, complete the work, with any modifications agreed by the bishop, the commissioners and the parsonages board, and in default the board may complete the work⁴.

¹ He as successor to the Diocesan Dilapidations Board: see the Repair of Benefice Buildings Measure 1972, s 29.

² As to sequestration, see PARA 892 et seq ante.

³ Parsonages Measure 1938, s 2A (1); Church Property (Miscellaneous Provisions) Measure 1960, s 3 (1). A pastoral scheme or order may provide for the improvement of a house of residence and the division of a parsonage house: see the Pastoral Measure 1968, ss 31 (1) (b), (f), 38 (i), and PARA 876 ante. A scheme of the diocesan synod may authorise the parsonages board to execute improvement works to parsonage houses: Repair of Benefice Buildings Measure 1972, s 15 (1) (b). A scheme of the synod may also authorise the board to improve buildings held for charitable purposes connected with the Church of England: s 15 (3): see PARA 1176 post.

⁴ Parsonages Measure 1938, s 2A (2); Church Property (Miscellaneous Provisions) Measure 1960, s 3 (1).

UPDATE

1142 Division and improvement of parsonages

TEXT AND NOTES--An incumbent or bishop proposing to exercise any of the powers conferred on him by the 1938 Measure s 2A in respect of the residence house of a benefice for which a team ministry is established must, if the house is or is to be occupied by the incumbent, (1) keep every member of the team informed of matters arising from the proposal, (2) afford every member of the team an opportunity to express views thereon before taking any action to implement the proposal, and (3) have regard to those views before taking any such action: s 3(4) (added by the Team and Group Ministries Measure 1995 s 8(4)).

TEXT AND NOTE 3--Neither the patron's nor the commissioners' consent is required: 1938 Measure s 2A(1); Patronage (Benefices) Measure 1986 s 34(2), Sch 4 para 2; Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 5(a). As to the application of the 1986 Measure to a Crown benefice, see 1986 Measure s 35(9). As to Crown benefices, see 1986 Measure s 35(1), PARA 818A.15. However, where the residence house of a benefice is occupied by a member of the team in a team ministry, the sequestrators may not carry out any authorised work without that member's consent: 1938 Measure s 2A(1A), added by Team and Group Ministries Measure 1995 s 8(3).

NOTE 3--Reference to 1968 Measure s 31 omitted: 1972 Measure s 15(1)(b) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 5). 1968 Measure consolidated in Pastoral Measure 1983: see table para 1435A.

TEXT AND NOTE 4--Agreement of the commissioners no longer required: 1938 Measure s 2A(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para (b)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1143. Enfranchisement of parsonages.

1143. Enfranchisement of parsonages.

Where the residence house of a benefice is held by the incumbent under a lease¹, provisions relating to the enfranchisement of places of worship held under lease² have effect in relation to the enlargement of the incumbent's leasehold interest into a fee simple, and in relation to the estate so acquired, as it would have effect if the leasehold interest were vested in trustees³. The powers and provisions relating to the purchase of houses for parsonages⁴ apply to the acquisition of the freehold reversion⁵.

1 For the meaning of 'lease', see PARA 1066 note 1 ante.

2 I.e. the provisions of the Places of Worship (Enfranchisement) Act 1920; Leasehold Reform Act 1967: see PARA 1066 ante.

3 Places of Worship (Enfranchisement) Act 1920, s 1 (1A); Leasehold Reform Act 1967, s 40 (3). The provisions relating to the enfranchisement of places of worship apply when the leasehold interest is held by trustees: see the Places of Worship (Enfranchisement) Act 1920, s 1 (1); Leasehold Reform Act 1967, s 40 (1) (a). A parsonage house will normally be vested in the incumbent: see PARA 1140 ante.

4 I.e. the provisions of the Parsonages Measure 1938 (as amended): see PARAS 1140, 1141 ante.

5 Places of Worship (Enfranchisement) Act 1920, s 1 (1A); Leasehold Reform Act 1967, s 40 (3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1144. Grants of land by public bodies, corporations and limited owners.

1144. Grants of land by public bodies, corporations and limited owners.

The principal officer of any public department holding land on behalf of Her Majesty or for the public use or use of his department and every body politic, corporate or collegiate, and corporation, aggregate or sole, and all trustees or other persons having the management of any charitable foundation or public institution, or other persons empowered under the Lands Clauses Acts¹ to convey or release land by an assurance under seal, may convey to the Church Commissioners, by way of voluntary gift or on sale, any land, tenements or hereditaments, provided that any land given must not exceed 1 acre, including the site of any buildings on it, to be used as parsonages or residences, or for enlarging parsonages or residences of incumbents, or as gardens or appurtenances to it².

¹ For the persons having power to convey under the Lands Clauses Acts, see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 553.

² Parsonages Act 1865, s 4; Church Commissioners Measure 1947, ss 2, 18 (2). The limitation of 1 acre does not apply to a sale for fair value: Parsonages Act 1865, s 4. The form of conveyance may be in accordance with the form in the Queen Anne's Bounty Act 1838, s 20: Parsonages Act 1865, s 4. A tenant for life has power under the Settled Land Act 1925, s 55, to make grants of not more than 1 acre of land for the site of a residence of a minister of religion: see further SETTLEMENTS. For other powers of making gifts for parsonages and residences, see PARA 1057 et seq ante, and CHARITIES vol 8 (2010) PARA 69.

UPDATE

1144 Grants of land by public bodies, corporations and limited owners

NOTE 2--1838 Act repealed, 1865 Act s 4 amended: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(i) Acquisition of Residence and Glebe/1145. Return of surplus sites.

1145. Return of surplus sites.

Where any land acquired by way of gift, otherwise than under the New Parishes Measure 1943¹, for the site of the residence house of a benefice², or any part of that land, has not been used for the purpose for which it was acquired, and the incumbent considers that the land is no longer required for that purpose, he may reconvey that land or that part of it to the grantor or his successors in title without consideration³. The consent of the bishop⁴, the Church Commissioners and the parsonages board⁵ is required⁶.

1 As to acquisition of land for residence houses under the New Parishes Measure 1943, see PARAS 1061, 1062 ante. As to the disposal of such land, see PARA 1110 ante.

2 For the meaning of 'benefice', see the Interpretation Measure 1925, s 3, and PARA 768 note 1 ante.

3 Church Property (Miscellaneous Provisions) Measure 1960, s 10.

4 'Bishop' means the bishop of the diocese in which the benefice is situated: *ibid* s 28 (1).

5 *Ie* as successor to the diocesan dilapidations board: see the Repair of Benefice Buildings Measure 1972, s 29.

6 Church Property (Miscellaneous Provisions) Measure 1960, s 10 proviso. The sealing by the commissioners of any deed made under this provision is conclusive evidence that the requirements of the provision have been carried out: s 27.

UPDATE

1145 Return of surplus sites

TEXT AND NOTE 6--Consent of commissioners no longer required: 1960 Measure s 10 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 5). The reference to parsonages board includes the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see PARA 520): 1960 Measure s 7(3) (see PARA 1111).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1146. Mortgage by incumbent.

(ii) Powers of Mortgaging

1146. Mortgage by incumbent.

An incumbent of a benefice¹ may borrow at interest on mortgage of the glebe and profits of his benefice in the prescribed form for all or any of the following purposes, namely (1) the erection or purchase of a house or the purchase of land for the site of a house, or an orchard, garden and appurtenances or other land, up to 6 acres; (2) improving² any house so erected or purchased or acquired by way of exchange; (3) dividing an existing house into two or more parts; (4) erecting, improving, enlarging or purchasing any house, cottage or other buildings or land belonging to or suitable for acquisition for the benefice; (5) the construction and improvement of the drainage of any such house, cottage, building or land and the provision and improvement of the supply of services to it; (6) the making up of roads and footpaths adjoining any property belonging to the benefice and the improvement of the drive, paths and gardens of the residence house of the benefice; (7) purchasing not more than 12 acres of land contiguous to or desirable to be used or occupied with the house of residence or glebe of the benefice; (9) building offices, stables, outbuildings or fences for the house of residence; (10) building, improving, enlarging or purchasing a farmhouse or farm buildings or labourers' dwelling houses belonging to or desirable to be acquired for a farm or land appertaining to the benefice; (11) paying compensation for the extinguishment of manorial incidents; and (12) paying an amount required for equality of exchange on the exchange of a parsonage house³.

The amount of the loan must normally be not less than £100 and not exceed three years' net income of the benefice⁴, but this restriction does not apply in the case of a loan made by the Church Commissioners⁵.

The incumbent⁶ must first submit a scheme and estimate to the bishop of the diocese and the patron of the benefice, and obtain their written consent to it⁷. The mortgage is to be for the term of thirty-five years, or until repayment of the principal sum secured with interest and incidental costs; and after the first year of the term the incumbent is to repay yearly one-thirtieth part of the principal sum with interest on it or on so much of it as remains unpaid⁸.

The Church Commissioners may lend money to incumbents for any of the aforementioned purposes⁹. Colleges and halls in the Universities of Oxford and Cambridge and other corporate bodies possessing the patronage of benefices are also empowered to lend money to assist in any of the aforementioned purposes in respect of benefices in their patronage¹⁰.

The commissioners have power to postpone in whole or in part the repayment of any money advanced by them under any of the foregoing provisions, the payment of interest on it, or both such repayment or payment, for such periods and on such conditions as they may from time to time determine, and this power may be exercised at the time when the loan is made or at any time or times during its currency¹¹.

1 The incumbent of any benefice which has been augmented under the Ecclesiastical Commissioners Act 1840 cannot raise money by mortgage of his benefice for purchasing, building or improving a parsonage house without the consent of the Church Commissioners: Ecclesiastical Houses of Residence Act 1842, s 13; Church Commissioners Measure 1947, s 18 (2).

2 This includes making additions to the house: *Boyd v Barker* (1859) 4 Drew 582.

3 Clergy Residences Repair Act 1776, ss 1-4, 6, 7, 12-20; Clergy Residences Repair Act 1780, s 2, Schedule; Glebe Exchange Act 1815, s 6; Parsonages Act 1838, ss 1, 4, 5; Parsonages Act 1865, ss 1, 3; Loans (Incumbents of Benefices) Amendment Act 1918, s 2, Sch. 2; Parsonages Measure 1938, ss 1 (1A) (iii), 2 (1) (i), (ii), (iv), 10, 17, 18; Church Property (Miscellaneous Provisions) Measure 1960, s 1. The first four Acts mentioned in this note (excluding the Glebe Exchange Act 1815) are principal Acts for the purposes of the Loans (Incumbents of Benefices) Amendment Act 1918 and are to be construed together as one Act with this Act: see s 1, Sch. 1. The Clergy Residences Repair Act 1776, s 14, has ceased to have effect in relation to persons within the jurisdiction under the Mental Health Act 1959, Part VIII (ss. 100-121): s 121, Sch. 5. See also the Coast Protection Act 1949, s 33.

4 Parsonages Act 1865, s 1.

5 Church Property (Miscellaneous Provisions) Measure 1960, s 14 (1).

6 The powers of charging the revenues and possessions of a benefice by the incumbent may for the purpose of obtaining a loan from the commissioners be exercised during the vacancy of the benefice by the sequestrator or sequestrators: Loans (Incumbents of Benefices) Amendment Act 1918, s 3; Church Commissioners Measure 1947, ss 2, 18 (2).

7 Clergy Residences Repair Act 1776, s 1. Loans for the purposes of the principal Acts mentioned in note 3 supra, made in accordance with the regulations contained in the Loans (Incumbents of Benefices) Amendment Act 1918, Sch. 2 (see PARA 1148 post), are as valid and effectual to all intents as if the parties to them had complied in all respects with the provisions contained in those Acts for obtaining, securing and expending loans (s. 2); the bishop and patron, as consenting parties, are precluded from themselves advancing money on the mortgage (*Greenlaw v King* (1840) 3 Beav 49; affd. (1841) 10 LJ Ch 129), but the incumbent may do so (*Boyd v Barker* (1859) 4 Drew 582). In practice, however, loans are hardly ever made by private individuals but in nearly all cases by the commissioners. The money can be borrowed on mortgage only to pay for future works and not to repay money already expended: *Lidbetter v Hatch* [1907] 1 Ch 404. It is essential that before any loan is obtained or any building is commenced application should be made to the commissioners, and that the necessary preliminaries shall have been completed in accordance with the instructions which will be given by them, and that the formal consent prepared by them shall have been duly executed.

8 Parsonages Act 1838, s 1.

9 Clergy Residences Repair Act 1776, s 12; Parsonages Act 1838, s 4; Parsonages Act 1865, s 3; Parsonages Measure 1938, ss 1 (1A) (iii), 2 (1) (iv); Church Commissioners Measure 1947, ss 2, 18 (2); Church Property (Miscellaneous Provisions) Measure 1960, ss 1, 14 (2). The limitations on the amount of the loan or the rate of interest on it do not apply to loans made by the commissioners: s 14 (1). The commissioners have power to extend within the limits prescribed by law the term of repayment of any loan advanced by Queen Anne's Bounty for the purposes of the Loans (Incumbents of Benefices) Amendment Act 1918 where the revenues of the benefice charged with the loan were immediately before 2nd October 1936 derived wholly or in part from tithe rentcharge: Tithe Act 1936, s 38, Sch. 8 para 8; Church Commissioners Measure 1947, ss 2, 18 (2).

10 Clergy Residences Repair Act 1776, s 13; Parsonages Act 1838, s 5; Parsonages Act 1865, s 3; Parsonages Measure 1938, s 17.

11 Parsonages (Amendment) Measure 1947, s 2; Church Commissioners Measure 1947, ss 2, 18 (2).

UPDATE

1146 Mortgage by incumbent

TEXT AND NOTES 1-9--Repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 3--Coast Protection Act 1949 s 33 repealed in part: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 3.

NOTE 10--1776 Act s 13 amended: *ibid* Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1147. Loans for purchase, building or repair.

1147. Loans for purchase, building or repair.

Where the object of the loan is the purchase of sites or houses or the building or repair of houses¹, the money must be paid into the hands of some person nominated to receive and apply it for the purpose by the Ordinary, patron and incumbent². If the site for building is not already part of the glebe, it must be secured to the benefice through the medium of the Church Commissioners³.

1 See the Parsonages Act 1865, s 3. The mortgage cannot be validly made if the money has already been expended: *Lidbetter v Hatch* [1907] 1 Ch 404. The Church Commissioners' rule is that the outside limits of the term for repayment are thirty years for a purchase of land, twenty-five years for a new house and fifteen years for alterations, additions or improvements.

2 Clergy Residences Repair Act 1776, s 4. The nomination is to be in the form contained in the Schedule to the Act (s. 4), and should not substantially depart from it: *Lidbetter v Hatch* [1907] 1 Ch 404. In addition to the nominee there must be a surety who will join him in a bond in double the value of the loan to secure that it is duly laid out: s 4. Money arising from a sale may, with the commissioners' consent, be applied in the discharge of any principal sum charged on the benefice in respect of money lent by Queen Anne's Bounty (Loans (Incumbents of Benefices) Amendment Act 1918, s 5); see also the Parsonages Measure 1938, s 5 (2); and the Parsonages (Amendment) Measure 1947, s 3; Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule.

3 See PARA 1146 note 7 ante.

UPDATE

1147-1150 Loans for purchase, building or repair ... Other provisions for loans for erection of houses of residence

Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

1147 Loans for purchase, building or repair

NOTE 2--1938 Measure s 5 substituted: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 5 (not yet in force).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1148. Regulations for loans from Church Commissioners.

1148. Regulations for loans from Church Commissioners.

An incumbent wishing to obtain a loan from the Church Commissioners must transmit to them a signed statement of the income of the benefice and the necessary estimates and plans¹. The commissioners may inquire into the condition of the buildings and as to timber and materials on the glebe fit for use². If they entertain the application for a loan the consent of the bishop³ and patron⁴ must be obtained⁵, but urgent work may be commenced before the necessary consents are obtained⁶. The bishop need not make inquiries before giving his consent⁷. Alterations during the progress of the works may be made without any further consent of the bishop or patron⁸.

1 Loans (Incumbents of Benefices) Amendment Act 1918, s 4, Sch. 2 para 1; Church Commissioners Measure 1947, ss 2, 18 (2).

2 Loans (Incumbents of Benefices) Amendment Act 1918, Sch. 2 para 2; Church Commissioners Measure 1947, ss 2, 18 (2).

3 Any notification or consent required to be given to or by the bishop under the regulations contained in the Loans (Incumbents of Benefices) Amendment Act 1918, Sch. 2, may during a vacancy of the see be given to or by the guardian of the spiritualities of the see: Vacancies in Sees Measure 1959, s 1. As to this guardian, see PARA 489 ante.

4 In case the patrons are more than two in number the consent of the majority is sufficient: Loans (Incumbents of Benefices) Amendment Act 1918, Sch. 2 para 4.

5 Ibid Sch. 2 para 3.

6 Ibid Sch. 2 para 5.

7 Ibid Sch. 2 para 3.

8 Ibid Sch. 2 para 6. A charge for a loan made in accordance with these rules is as valid as if all the provisions of the principal Acts (see PARA 1146 note 3 ante) had been complied with; the rules may be revoked or amended by regulations made by the commissioners and approved under the sign manual: s 2; Church Commissioners Measure 1947, ss 2, 18 (2).

UPDATE

1147-1150 Loans for purchase, building or repair ... Other provisions for loans for erection of houses of residence

Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1149. Protection of purchasers.

1149. Protection of purchasers.

Any messuage, building, land or other hereditament belonging to or held in trust for a benefice and subject to a mortgage or charge in favour of the Church Commissioners, when sold and conveyed by the incumbent of the benefice under any statutory authority, vests in the purchaser discharged from the mortgage or charge without any release by, or concurrence in the conveyance of, the commissioners¹. The mortgage or charge attaches to the purchase money of the property sold, and the commissioners have the same remedies as nearly as may be in relation to the purchase money as they would have had against the property sold if it had not been sold¹.

¹ Loans (Incumbents of Benefices) Amendment Act 1918, s 4; Church Commissioners Measure 1947, s 2.

UPDATE

1147-1150 Loans for purchase, building or repair ... Other provisions for loans for erection of houses of residence

Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1150. Other provisions for loans for erection of houses of residence.

1150. Other provisions for loans for erection of houses of residence.

Where new buildings are necessary for the residence of the incumbent of a benefice having an income exceeding £100 a year and avoided after 14th August 1838¹, and where those new buildings cannot conveniently be erected on the glebe, the bishop may contract, either personally or through a nominee², for the purpose of a house and land, or of land upon which a house can be built in a convenient situation for a residence, and may raise money for the purpose by mortgage of the glebe and other profits of the benefice, up to the value of four years' net income, and this mortgage is binding on the incumbent and his successors³. The buildings and land must be conveyed to the patron, his heirs and successors for the use and benefit of the incumbent and his successors⁴. Mortgages made under the foregoing powers must be in the prescribed form and for the term of thirty-five years or until repayment of the loan with interest and incidental costs.

The Church Commissioners may lend the money at interest not exceeding 4 per cent per annum⁶, and colleges and halls in the Universities of Oxford and Cambridge and other corporate bodies possessing the patronage of benefices may lend the money without taking any interest for it⁷.

1 le the date of the passing of the Pluralities Act 1838.

2 A contract of purchase made by a nominee is not valid until confirmed by the bishop in writing under his hand: Pluralities Act 1838, s 71. The nominee must be appointed in the prescribed form: s 66 (repealed), 70, Sch. 2.

3 Ibid s 70.

4 Ibid s 71. The conveyance must be in the prescribed form: see s 71, Sch. 2.

5 Ibid ss 62 (repealed), 70, Sch. 2.

6 Ibid s 72, Sch. 2; Church Commissioners Measure 1947, ss 2, 18 (2).

7 Pluralities Act 1838, s 73, Sch. 2.

UPDATE

1147-1150 Loans for purchase, building or repair ... Other provisions for loans for erection of houses of residence

Repealed: Endowments and Glebe Measure 1976 Sch 8, Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1151. Charge for compensation paid to tenant of glebe.

1151. Charge for compensation paid to tenant of glebe.

A bishop, with the approval of the Church Commissioners' Assets Committee¹, and an incumbent, with the written consent of the patron or of the commissioners, after paying compensation for disturbance and for improvements and other matters under the Agricultural Holdings Act 1948² to an outgoing tenant of land belonging to the see or the benefice, as the case may be, or after carrying out certain improvements, may obtain from the Minister of Agriculture, Fisheries and Food³ a charge upon the holding of the amount so paid or expended⁴. The commissioners, instead of the incumbent, may pay the compensation to the tenant, and obtain from the minister a charge on the holding in respect of it in favour of themselves⁵.

Compensation payable to a tenant⁶ where an order for a new tenancy is precluded on certain grounds⁶ may, if the commissioners think fit, be made by them on behalf of the incumbent⁷, and the revenues and possessions of the benefice will stand charged with the repayments⁸.

1 See the Church Commissioners Measure 1964, s 2 (4), and PARAS 381, 383 ante.

2 See the Agricultural Holdings Act 1948, ss 82, 83.

3 See *ibid* s 94 (1); Transfer of Functions (Ministry of Food) Order 1955, S.I. 1955 No. 554.

4 Agricultural Holdings Act 1948, s 88 (1), (2).

5 *Ibid* s 88 (3).

6 *Ie* under the Landlord and Tenant Act 1954, s 37.

7 *Ibid* s 61 (1) (b).

8 *Ibid* s 61 (1) (e). Payments for initial repairs under Part I (ss. 1-22) may be similarly paid and charged: s 61 (1) (b), (e). See further LANDLORD AND TENANT.

UPDATE

1151 Charge for compensation paid to tenant of glebe

TEXT AND NOTES 1-4--Repealed in relation to incumbent, *ie* s 88(2) repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 2-5--1948 Act consolidated in Agricultural Holdings Act 1986.

TEXT AND NOTES 6-8--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(ii) Powers of Mortgaging/1152. Charge for improvement of land.

1152. Charge for improvement of land.

Under certain local and personal Acts constituting companies with power to advance money for the improvement of land, and under the Improvement of Land Act 1864, incumbents may create a terminable charge on the land of their benefices for securing the repayment of money borrowed for its improvement, but the patron of the benefice and the bishop of the diocese must give their written consent to every such improvement and charge¹. Arrears of the charge can be recovered by a sale of the land charged², but if a portion of the land is compulsorily purchased under statutory powers the remaining payments of the charge will not be ordered to be paid off in advance out of the purchase money³.

1 Improvement of Land Act 1864, s 20.

2 *Scottish Widows' Fund v Craig* (1882) 20 ChD 208; *Northern Assurance Co v Harrison* [1889] WN 74.

3 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 674; as to the compulsory acquisition of land subject to mortgages generally, see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 711 et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iii) Powers of Leasing/1153. Powers of leasing before 1842.

(iii) Powers of Leasing

1153. Powers of leasing before 1842.

After 1571 all leases and other assurances made or suffered by any parson, vicar or any other person having any spiritual or ecclesiastical living of ¹ any houses, land, tithes, tenements or other hereditaments being part of the possessions of any parsonage, vicarage or other spiritual promotion, other than a lease for twenty-one years, or three lives², at the accustomed yearly rent or more, are utterly void and of no effect³. Where a lease, though not made in accordance with the statutory provisions, can be regarded as voidable only and not as absolutely void, it may be good as against the grantor during his incumbency if he is a corporation sole⁴, or during the lifetime of the head if the grantor is a corporation aggregate⁵, and may be adopted by the grantor's successors⁶.

¹ The word 'or' appears in the statute but seems to be in error for the word 'of': see *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274 at 279, [1962] 3 All ER 290 at 292.

² Power to grant leases for a life or lives or for any term of years determinable with life or lives has effect in regard to any grant made on or after 1st January 1926 as if it authorised a grant for a lease not exceeding ninety years determinable by notice after the death of the lessee: Law of Property Act 1922, s 145, Sch. 15 para 8 (2). As to the conversion of leases existing on that date or made thereafter for life or lives, see the Law of Property Act 1925, ss 149 (6), 208 (2), and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 240.

³ Ecclesiastical Leases Act 1571, s 2; Charities Act 1960, s 39, Sch. 5. This provision is not restricted to ecclesiastical property: *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290. Nothing in the Act of 1571 operates to restrict the powers of leasing contained in the Universities and Colleges Estates Act 1925: *Eton College v Minister of Agriculture, Fisheries and Food* supra. The Act of 1571 no longer applies to any body corporate in a cathedral church (Cathedrals Measure 1963, s 53, Sch. 1); nor does it now have effect in relation to any college or hall in any university (Universities and Colleges Estates Act 1964, s 1). A lease not within the provisions of the Ecclesiastical Leases Act 1571, s 2, is utterly void, and consequently the grantor's right to re-enter exists from the moment of the lease's execution, and where no rent is reserved time begins to run from that date under the Limitation Act 1939 (*President and Governors of Magdalen Hospital v Knotts* (1879) 4 App Cas 324, HL) but not if a rent, however small, were reserved so as to create a tenancy from year to year (see at 335, per Lord Selborne). A lease for years may bind a parson personally for so long as he continues parson, and if he voluntarily breaks the term by resigning he may be liable in damages: *Price v Williams* (1836) 1 M & W 6. The lease of a rectory for the term of a rector's incumbency, although not containing the statutory condition of avoidance, was not absolutely void but was good as between the rector and the lessee, and would only become void on the bishop ordering personal residence: *Rickard v Graham* [1910] 1 Ch 722.

⁴ *Bishop of Salisbury's Case* (1613) 10 Co Rep 58 b.

⁵ *Roe d Earl of Berkeley v Archbishop of York* (1805) 6 East 86 at 103; Co Litt 4a.

⁶ Co Litt 45 a. The grant of a lease of charity property ending more than twenty-two years after it is granted is void if not granted with the approval of the Charity Commissioners: Charities Act 1960, s 29; and see *Bishop of Bangor v Parry* [1891] 2 QB 277. Property of an ecclesiastical corporation is not a 'charity' for this purpose: Charities Act 1960, s 45 (2) (a).

UPDATE

1153 Powers of leasing before 1842

TEXT AND NOTES 1-4--1571 Act repealed: Statute Law (Repeals) Act 1998.

NOTE 3--1939 Act consolidated in Limitation Act 1980; see LIMITATION PERIODS. 1960 Act consolidated: see now Charities Act 1993; and CHARITIES.

NOTE 6--1960 Act s 29 repealed: Charities Act 1992 s 78(2), Sch 7. For provision as to restrictions on dispositions of charity land, see now Charities Act 1993 s 36. 1960 Act s 45(2) now 1993 Act s 96(2); see CHARITIES vol 8 (2010) PARA 395.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iii) Powers of Leasing/1154. Leases under the Ecclesiastical Leases Act 1842.

1154. Leases under the Ecclesiastical Leases Act 1842.

Since 1842 it has been possible for any incumbent of an ecclesiastical benefice, with the consents of the bishop and patron¹, to let² any part of the glebe or other land of or belonging to the benefice³, with or without any farmhouses, cottages or other agricultural buildings on it, on lease at the best yearly rent reasonably obtainable without taking a fine, for farming purposes for a term of fourteen years, or on an improving lease for twenty years⁴, provided the parsonage house and 10 acres of land adjoining it are reserved, or if there are not 10 acres adjoining, then 10 acres, or as much, being less than 10 acres, as is within 5 miles of the parsonage or of the church where there is no parsonage⁵.

The lease must contain covenants given by the lessee to pay outgoings, not to assign or sublet without the consents of the bishop, patron and incumbent, to cultivate according to the most improved system of husbandry in the locality so far as that system is not inconsistent with any express stipulation in the lease, to keep all land and fixtures on it in good condition and repair, to insure all buildings against fire, and to lay out in reinstating those buildings any money received by virtue of such insurance; the lease must contain reservations of all timber, saplings and underwood and of all mines and minerals, but the lessor may covenant that the lessee may take brick, earth, stone, lime, rough timber or other materials for the erection or repair of buildings or gates or for other improvements; and the lease must contain a proviso for re-entry in the event of the lessee's default⁶. The lease must be reported on by a surveyor appointed by the bishop, patron and incumbent, who must provide by actual survey, or by copy from an existing map, a plan showing the land to be leased and the other land belonging to the benefice⁷. Where the patron is under incapacity or abroad, consent may be given on his behalf by the guardian, committee, or attorney as the case may be⁸, and when the patronage is in the Crown the consent may be testified by the First Lord of the Treasury if the benefice is above the yearly value of £20, or by the Lord Chancellor if it is not⁹. All the incumbent's documents relating to the lease are deposited in the diocesan registry¹⁰, and a written receipt of a counterpart or attested copy of the lease indorsed on the lease and signed by the lessor is conclusive evidence that the lease has been duly executed by him, and the execution of the lease by the bishop and patron is conclusive evidence that the land leased might properly be included and that the conditions as to rent and covenants have been complied with¹¹.

1 In the case of a perpetual curacy, where the patron is a vicar, the consent of the rector as patron paramount is also required: *Doe d Brammall v Collinge* (1849) 7 CB 939. As to perpetual curacies today, see PARA 771 ante.

2 Ie under the Ecclesiastical Leases Act 1842. This Act does not abridge any right of leasing which incumbents enjoyed independently of it: *Green v Jenkins* (1860) 1 De GF & J 454; see PARA 1153 ante.

3 This includes any land vested in any trustee for the benefit of any incumbent where at least three-fourths of the net income is payable to the incumbent (Ecclesiastical Lease Act 1842, s 13), but does not include any part of the churchyard (*Rector and Churchwardens of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95).

4 Ecclesiastical Leases Act 1842, s 1.

5 Ibid s 2.

6 Ibid s 1.

7 Ibid s 3. The practice of the Church Commissioners, where their approval is required under the Ecclesiastical Leasing Acts (see PARA 1155 post), is to accept in general an extract from the 25-inch scale ordnance survey map for the purpose of showing the land to be dealt with and the ownership of all adjoining property, which must be marked on it, and to accept, at any rate in the first instance, a 6-inch scale map where a considerable quantity of land is to be dealt with.

8 Ecclesiastical Leases Act 1842, s 7. This section ceases to have effect in relation to persons within the jurisdiction under the Mental Health Act 1959, Part VIII (ss. 100-121): s 121, Sch. 5. In respect of a patient within the jurisdiction the judge may order that the power be exercisable by the Lord Chancellor: s 103 (1) (j).

9 Ecclesiastical Leases Act 1842, s 8. As to consent where the patronage is attached to the Duchy of Cornwall, see s 9.

10 Ibid s 14.

11 Ibid s 4.

UPDATE

1154 Leases under the Ecclesiastical Leases Act 1842

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iii) Powers of Leasing/1155. Leases under the Ecclesiastical Leasing Act 1842.

1155. Leases under the Ecclesiastical Leasing Act 1842.

An incumbent¹ or other ecclesiastical corporation², with the consent of the Church Commissioners³ and of the patron⁴, may grant a building or repairing lease of any land or houses⁵, except any house of residence of any corporation sole or of any member of a corporation aggregate, and any offices, gardens, orchards or pleasure grounds convenient for actual occupation with it, and except any mines or easements the grant of which might be prejudicial to the enjoyment of that residence⁶, for not more than ninety-nine years, to any person willing to improve or repair existing houses, or to erect new houses on the land, or to annex any part of the land to buildings erected or to be erected on it⁷, and may grant a renewal of such a lease, so long as one-fourth part of the term remains unexpired⁸, and may grant a mining lease for any term not exceeding sixty years⁹.

A building or repairing lease so granted must reserve the best rent reasonably obtainable without taking a fine¹⁰, although a smaller rent may be reserved for the first six years¹¹, and it must contain covenants for erecting or rebuilding or repairing buildings on the land, for keeping in repair and insuring against fire buildings erected or to be erected pursuant to the lease, and for laying out any money received under such insurance in reinstating buildings; and the lease must also contain a proviso for re-entry in the event of the lessee's default¹². The incumbent or other ecclesiastical corporation may, with the same consents, appropriate any part of the land which might be leased as aforesaid for ways, yards or gardens to the buildings erected or to be erected on the land, or for yards or places necessary or convenient for carrying on any manufacture or trade, or for streets, squares, sewers or otherwise for the general improvement of the estate or the accommodation of the occupiers¹³. Provisions as to the consent of the Crown as patron, and of any patron who is under incapacity, similar to those already referred to in respect of farming leases at a rackrent, apply¹⁴.

1 Where a benefice is vacant the bishop may exercise the powers of the incumbent under the Ecclesiastical Leasing Acts 1842 and 1858 subject to the same restrictions: Ecclesiastical Commissioners (Powers) Measure 1936, s 8 (1). During the vacancy of the see the powers of the bishop under s 8 (1) are exercised by the guardian of the spiritualities of the see: Vacancies in Sees Measure 1959, s 7 (1). Any notice required to be given to a bishop may during a vacancy of the see be given to the guardian of the spiritualities: Ecclesiastical Commissioners (Powers) Measure 1936, s 8 (2); Vacancies in Sees Measure 1959, s 7 (2). As to this guardian, see PARA 489 ante.

2 The Ecclesiastical Leasing Acts 1842 and 1858 make it lawful for any ecclesiastical corporation, aggregate or sole, except any college or corporation of vicars choral, priest vicars, senior vicars, custos and vicars, or minor canons, and except any ecclesiastical hospital or its master, to grant leases subject to the restrictions set out in the Acts: see *infra*. These Acts no longer apply to any body corporate in a cathedral church: Cathedrals Measure 1963, s 53, Sch. 1.

3 Ecclesiastical Leasing Act 1842, s 20. The commissioners exercise their functions under this Act as successors to the functions of the Ecclesiastical Commissioners: see the Church Commissioners Measure 1947, ss 2, 18 (2), and PARA 363 ante. See also PARA 1154 note 7 ante.

4 Ecclesiastical Leasing Act 1842, s 20.

5 *Ibid* s 1. The land includes any land held in trust for the corporation in such manner that not less than three-fourths of the net income is payable to the incumbent of a benefice: s 28. It does not include any portion of the churchyard: *Rector and Churchwardens of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95.

6 Ecclesiastical Leasing Act 1842, s 9.

7 Ibid s 1.

8 Ibid s 5. A lease for twenty-one years made by a vicar within three years of the expiration of a former lease of premises in London belonging to the vicarage, not being the residence nor above 10 acres, was held not to be within the Ecclesiastical Leases Act 1571, nor the amending Acts: *Vivian v Blomberg* (1836) 3 Scott 681. The provisions of the Landlord and Tenant Act 1954 providing for the continuation of tenancies are modified in relation to tenancies of ecclesiastical property by s 61, and are discussed in LANDLORD AND TENANT. There are special provisions relating to the enfranchisement of ecclesiastical property under the Leasehold Reform Act 1967: see s 31, and LANDLORD AND TENANT.

9 Ecclesiastical Leasing Act 1842, s 6.

10 Ibid s 1.

11 Ibid s 2.

12 Ibid s 1.

13 Ibid s 3.

14 See ibid ss 22-24, and PARA 1154, text to notes 8, 9 ante.

UPDATE

1155 Leases under the Ecclesiastical Leasing Act 1842

TEXT AND NOTES--These provisions no longer apply to incumbents: Endowments and Glebe Measure 1976 Sch 7 s 47(3).

NOTE 1--1936 Measure s 8, and 1959 Measure s 7 repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 8--1954 Act s 61 repealed: Endowments and Glebe Measure 1976 Sch 8. Leasehold Reform Act 1967 s 31 now as amended by Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 10; Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 15; and SI 2009/1307 (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1509). 1571 Act repealed: Statute Law (Repeals) Act 1998.

NOTE 14--1842 Act s 22 partly repealed: Constitutional Reform Act 2005 Sch 18 Pt 2 (not yet in force).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iii) Powers of Leasing/1156. Leases under the Ecclesiastical Leasing Act 1858.

1156. Leases under the Ecclesiastical Leasing Act 1858.

The incumbent or other ecclesiastical corporation¹ may also, with the same consents² as are referred to in the previous paragraph, in cases where it is made to appear to the satisfaction of the Church Commissioners³ that it will be to the permanent advantage of the estate or endowments belonging to the corporation, lease in any manner any part of the property authorised to be leased by the Ecclesiastical Leasing Act 1842⁴, with or without a premium and upon any terms which the commissioners by an order under their seal approve as proper and advisable in the circumstances of the case⁵. Any money paid by way of premiums on the granting of any such lease, and all rents, royalties and other reservations reserved or made payable by any such lease of any mines, minerals, quarries or beds must be paid to the commissioners⁶; and such money, or the sums appropriated to the benefice in place of such money⁷ must be laid out by the commissioners at such times as they think proper in the purchase of other property to be held by the corporation on whose behalf the money has been received and, pending such purchase, must be invested in public stocks or funds and the dividends paid to the person to whom the rents and profits of such property would go⁸.

1 The Ecclesiastical Leasing Act 1858 no longer applies to any body corporate in a cathedral church: Cathedrals Measure 1963, s 53, Sch. 1: and see PARA 1155 note 2 ante.

2 Ie the consents required under the Ecclesiastical Leasing Act 1842: see PARA 1155 ante.

3 Ie as successors to the Ecclesiastical Commissioners: see the Church Commissioners Measure 1947, ss 2, 18 (2), and PARA 363 ante; and see PARA 1154 note 7 ante.

4 See PARA 1155 ante.

5 Ecclesiastical Leasing Act 1858, s 1. No lease or any land purchased or acquired, or in which a lessee's estate or interest is purchased or acquired by any ecclesiastical corporation under that Act, must be made or granted otherwise than from year to year, or for a term of years in possession not exceeding fourteen years, at the best rent reasonably obtainable without fine except under the express power contained in that Act or in the Ecclesiastical Leasing Act 1842, and the lessee must not be made dispunishable for waste or exempted from liability for waste: Ecclesiastical Leasing Act 1858, s 9. Incidental powers as to the making and variation of contracts, granting preliminary licences and as to the costs of leases, are contained in ss 4 and 5; and by s 12 the provisions of the Ecclesiastical Leasing Act 1842 are incorporated so far as applicable. As to the letting of glebe land for allotments or smallholdings, see AGRICULTURAL LAND vol 1 (2008) PARAS 402, 494, 531.

6 Ecclesiastical Leasing Act 1858, s 2. Money so received by the commissioners from 22nd June 1951 is mainly held as part of their general fund free from any trust in favour of the benefice: see the Benefices (Stabilization of Incomes) Measure 1951, s 4, and PARA 1241 note 1 post. The commissioners must appropriate an equivalent sum to the benefice: s 4 (2) (b), Schedule, Part I; see PARA 1241 post.

7 Ie under *ibid* s 4: see note 6 *supra*.

8 Ecclesiastical Leasing Act 1858, s 2; Benefices (Stabilization of Incomes) Measure 1951, s 5 (1); and see PARA 1241 post.

UPDATE

1156 Leases under the Ecclesiastical Leasing Act 1858

TEXT AND NOTES--These provisions no longer apply to incumbents: Endowments and Glebe Measure 1976 s 47(3), Sch 7.

NOTES 6-8--1951 Measure repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iii) Powers of Leasing/1157. Lease of parsonage house.

1157. Lease of parsonage house.

Neither the Ecclesiastical Leases Act 1842, nor the Ecclesiastical Leasing Acts¹ authorise a lease of a parsonage house, or a house of residence or the pleasure grounds held with it². An incumbent has, in fact, no power to grant a lease of a parsonage house for a period exceeding his incumbency, and any tenancy granted by him during his incumbency must contain a condition for avoiding the tenancy upon a copy of an order of the bishop requiring him to reside in the parsonage house being served on the occupier or left at the house³. Similarly a tenancy of a parsonage house granted by sequestrators⁴ must contain a condition providing for the termination of the tenancy six weeks after the determination of the sequestration during which the tenancy was granted⁵.

The bishop may, with the Church Commissioners' consent, authorise sequestrators⁶ to grant a lease or tenancy of the parsonage house for such period as the bishop may authorise⁷.

The letting of a parsonage house in these ways does not bring the house within the scope of the Rent Act 1968⁸, and the purpose for which possession is sought to be regained is not material⁹.

1 Ie the Ecclesiastical Leasing Act 1842 and the Ecclesiastical Leasing Act 1858: s 13.

2 See PARAS 1154, 1155 ante.

3 Pluralities Act 1838, s 59. This provision is not affected by the Rent Act 1965, Part III (ss. 30-36) (unlawful eviction and harassment): s 35 (4) (a). Where a rector with leave of absence let the rectory house, the curate in charge having been provided with another suitable residence, and the lease did not contain the condition rendering it void on service of a copy of the bishop's order, it was held that the lease was not void, but only voidable on service of the copy order: *Rickard v Graham* [1910] 1 Ch 722.

4 Ie under the Benefices (Sequestrations) Measure 1933: see s 4, and PARA 908 note 2 ante.

5 Ibid s 4 (2).

6 Ie appointed under the Pastoral Measure 1968, s 68: see PARA 815 ante.

7 Ibid s 68, Sch. 7 para 2. The lease or tenancy is subject to the provisions of the Pluralities Act 1838, s 59: Pastoral Measure 1968, Sch. 7 para 2; and see note 3 supra.

8 The Rent Act 1968 is discussed in LANDLORD AND TENANT.

9 *Bishop of Gloucester v Cunningham* [1943] KB 101, [1943] 1 All ER 61, CA; *Brandon v Grundy* [1943] 2 All ER 208, CA.

UPDATE

1157 Lease of parsonage house

TEXT--Neither the incumbent nor any sequestrators may grant a lease of any excluded part of a parsonage house belonging to the benefice to any person on or after 1 April 1978: Endowments and Glebe Measure 1976 s 29; Order of the Church Commissioners dated 11 August 1977. 'Excluded part' means any part which by reason of a certificate

of the bishop under Parsonages Measure 1938 s 11, is deemed not to form part of the house: 1976 Measure s 45(1). A lease granted in contravention is void: s 29.

Where any excluded part of a parsonage house is the subject of a lease the incumbent must within 7 days after receiving any rent pay it to the diocesan board of finance: Endowments and Glebe Measure 1976 s 30(1), (2). Any sum paid to the board is deemed to be income from diocesan glebe land and not part of the incumbent's income: s 30(3). The board may require the incumbent to take all necessary steps to enforce any lessee's covenant and may itself take proceedings if he fails to do so: s 30(4)-(6). The board must defray the incumbent's expenses of fulfilling obligations under the lease and of meeting expenses of maintenance, etc: s 30(7), (8). During a vacancy references to the sequestrators are substituted: s 30(9).

NOTE 3--Rent Act 1965 Pt III consolidated in Protection from Eviction Act 1977; see further LANDLORD AND TENANT.

TEXT AND NOTES 6, 7--Repealed: Endowment and Glebe Measure 1976 Sch 8.

TEXT AND NOTE 8--Rent Act 1968 repealed: Rent Act 1977 Sch 25.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1158. Sales etc. under the Ecclesiastical Leasing Act 1858.

(iv) Powers of Sale, Exchange, Partition and Demolition

1158. Sales etc. under the Ecclesiastical Leasing Act 1858.

An incumbent or other ecclesiastical corporation¹ may, with the same consents as are required in the case of leases², in cases where it is made to appear to the satisfaction of the Church Commissioners³ that it will be to the permanent advantage of the estate or the endowments belonging to the corporation, sell, convey in exchange or by way of partition⁴ or otherwise dispose of all or any part of the land, houses, mines, minerals or other property of or belonging to the incumbent or corporation (including glebe land⁵ but not the parsonage house, or its outbuildings, garden or other appurtenances)⁶, for such consideration in money, land or otherwise as the commissioners, by order under their seal, approve as reasonable and proper, but no sale by an incumbent can be so authorised until one month's notice⁷ has been given to the bishop of the diocese⁸. The power of sale includes power to release rentcharges, rent or other periodical sums forming part of the endowments of the ecclesiastical corporation or benefice⁹.

The assurance giving effect to any sale, exchange or release¹⁰ of any property of a benefice made under these powers (unless therein otherwise expressly provided) operates to discharge the property so disposed of from any mortgage or charge in favour of the commissioners, from any annual or other periodical sum payable to the incumbent of any other benefice or to any other ecclesiastical corporation, and from any other charge or incumbrance to the discharge of which the person entitled to release or discharge the same has given his consent in writing¹¹; and any such mortgages, charges or incumbrances become charged on the purchase money or other consideration given for the sale, exchange or release in like manner and as nearly as the circumstances permit as the property disposed of was subject to, but not so as to prevent or prejudice the exercise of any powers conferred on the commissioners¹² in respect of the improved income of the benefice¹³.

1 See PARA 1155 note 2 ante.

2 Ie under the Ecclesiastical Leasing Act 1842, s 20; see PARA 1155 ante.

3 See PARA 363 ante, 1156 note 3 ante.

4 Leaseholds may be partitioned even where the court would refuse to make partition: *North v Guinan* (1829) Beat 342.

5 It is understood that almost all sales of glebe land are now made under these provisions rather than under the Glebe Lands Act 1888.

6 The Ecclesiastical Leasing Act 1858 only applies to such property as was authorised to be leased under the Ecclesiastical Leasing Act 1842 (see the Ecclesiastical Leasing Act 1858, s 1), and by the Ecclesiastical Leasing Act 1842, s 9, the parsonage house and garden etc. are excluded. For a form of conveyance under the Act of 1858, see Forms and Precedents.

7 By the Glebe Lands Act 1888, s 11, such notice to the bishop of the diocese as may be prescribed for the purposes of that Act is substituted for the period of three months' notice required to be given to the bishop under the Ecclesiastical Leasing Act 1858, s 1. The notice is now limited to one month, and is issued from the commissioners' office.

8 Ibid s 1 proviso. Where the sale was to trustees of a settlement and the purchase was not authorised by the trust for investment, it was held that the commissioners had no remedy against the owners of the settled estates for specific performance: *Ecclesiastical Comrs v Pinney* [1900] 2 Ch 736, CA. As to the exercise of powers under the Ecclesiastical Leasing Acts in cases of vacancy of a benefice or a see, see PARA 1155 note 1 ante. As to sales under the New Parishes Measure 1943, s 17, and under other enactments, see PARAS 1110, 1111 ante.

9 Ecclesiastical Commissioners (Powers) Measure 1936, s 6 (1). For the purpose of the release of rentcharges and other periodical sums the corporation or incumbents have power to agree with the owners of any land or other property charged with the rentcharges or other sums for any apportionment necessary or proper for giving full effect to the agreement for release (s. 6 (1)); but the same consents and notices are required for the apportionments as for sales (s. 6 (1) proviso). Section 6 (1) does not apply to tithe rentcharges, corn rent moduses or other sums payable in lieu of tithes: s 6 (2).

10 See *ibid* s 7 (2).

11 This consent may be given either generally or in relation to any specific transaction by a document signed by the person entitled and approved by the commissioners under their seal; and a statement to the effect that the consent has been given contained in any deed of assurance of the property disposed of which is sealed by them is conclusive evidence of the facts so stated in favour of any person claiming under the assurance: *ibid* s 7 (3) (c).

12 *Ie* under the Ecclesiastical Leasing Acts (see PARA 1157 note 1 ante) or the Ecclesiastical Commissioners (Powers) Measure 1936.

13 *Ibid* s 7 (1), (3). That section does not extend to land tax (now abolished) or land tax redemption charge or to tithe rentcharge or to any corn rent modus or other sum payable in lieu of tithe: s 7 (1) proviso.

UPDATE

1158 Sales etc. under the Ecclesiastical Leasing Act 1858

TEXT AND NOTES--These provisions no longer apply to incumbents: Endowments and Glebe Measure 1976 s 47(3), Sch 7.

NOTE 5--Repealed: *ibid* Sch 8.

NOTE 7--1888 Act repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 10-13--Repealed: *ibid* Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1159. Application of consideration money.

1159. Application of consideration money.

All money paid on any sale, exchange or partition, except where the sale is in consideration of a rentcharge¹, is to be paid to the Church Commissioners². The receipt of the commissioners' treasurer is a good and sufficient discharge for the consideration of the property sold, and the purchaser is not bound to see to the application of the consideration paid³. The purchase money or the sums appropriated to the benefice in place of the purchase money⁴ must be reinvested by the commissioners at such times as they think proper in land convenient to be held by the corporation on whose behalf the money was received, and until so reinvested must be invested in public stocks or funds, and the dividends paid to the person to whom the rents and profits of the property to be purchased would go⁵.

If the incumbent so requests, the whole or any part of the sum appropriated in place of the consideration money arising from a transaction⁶ may be applied in redeeming any annual or other periodical sums charged in perpetuity on the endowments of the benefice, or on any part of those endowments, including the parsonage house, or in defraying the cost of improvements to the parsonage house, glebe or glebe buildings⁷, or in providing a new parsonage house, new glebe buildings, purchasing sites for those houses or buildings or in rebuilding or reconstructing existing houses or buildings⁸. These powers of application must only be exercised if the commissioners consider the expenditure will be of permanent advantage to the benefice and the consent of the patron or patrons, whose consent is required to a sale, must be obtained⁹.

1 See the Ecclesiastical Leases Act 1865, s 1.

2 Ecclesiastical Leasing Act 1858, s 2. The Church Commissioners act as successors to the Ecclesiastical Commissioners: see PARA 363, and PARA 1156 note 3 ante. Money so received by the commissioners from 22nd June 1951 is mainly held as part of their general fund free from any trust in favour of the benefice: see the Benefices (Stabilization of Incomes) Measure 1951, s 4, and PARA 1241 note 1 post. The commissioners must appropriate an equivalent sum to the benefice: s 4 (2) (b); see PARA 1241 post.

3 Ecclesiastical Leasing Act 1858, s 2. The money or part of it may be allowed to remain charged on the property sold by way of mortgage: s 2.

4 See under the Benefices (Stabilization of Incomes) Measure 1951, s 4: see note 2 supra.

5 Ecclesiastical Leasing Act 1858, s 2; Benefices (Stabilization of Incomes) Measure 1951, s 5 (1); and see PARA 1241 post. The property purchased or received in exchange or partition is to be conveyed to the corporation and become subject to the same powers of leasing, selling and otherwise disposing of as the property sold, save as otherwise provided by the Ecclesiastical Leasing Act 1858, s 2.

6 See under the Ecclesiastical Leasing Acts: see PARAS 1155, 1156, 1158 ante.

7 Ecclesiastical Commissioners (Powers) Measure 1936, s 5 (1); Benefices (Stabilization of Incomes) Measure 1951, s 5 (1).

8 Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (3); Benefices (Stabilization of Incomes) Measure 1951, s 5 (1).

9 Ecclesiastical Commissioners (Powers) Measure 1936, s 5 (1) proviso. The powers under s 5 (1) are exercisable notwithstanding that the endowments of the benefice may be subject to any mortgage, charge or other incumbrance in respect of which the incumbent is liable or the income of the benefice is applicable for the payment of any principal money, interest, or any annual or periodical sum: s 5 (2).

UPDATE

1159 Application of consideration money

NOTES 2-5--1951 Measure repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 6-9--Repealed: ibid Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1160. Alternative method of sale of glebe land.

1160. Alternative method of sale of glebe land.

If he is desirous of selling any of the glebe except the parsonage house and any land appurtenant to it¹, the incumbent may apply to the Secretary of State² for his approval of the proposed sale, but before so doing he must give notice to the bishop of the diocese and to the patron of the living³, and also to the parishioners and to the clerk of the local authority and the parish council⁴. If the land is subject to any mortgage or other debt, notice in the prescribed form must also be given to the mortgagee or other creditor⁵. After the notices have been given to the bishop and the patron the incumbent may apply to the Secretary of State to approve the sale⁶, and if the Secretary of State is satisfied of the *prima facie* expediency of the proposed sale, the land must be valued unless he otherwise directs⁷.

If the Secretary of State is then satisfied that the application has been duly made by an incumbent authorised to apply, that the prescribed notice has been given to the bishop and patron, that an objection to the sale by either has not been made, or if made ought not to prevail, and that the sale will be for the permanent benefit of the benefice, he may approve the sale subject to the provisions of the Glebe Lands Act 1888⁸, but he may not approve any sale of land subject to a lease originally created for a term exceeding twenty-one years or let for any term where, through the rent reserved being less than two-thirds of the value or for any other reason, the incumbent is not in possession of the full rents and profits, or the sale of mines or minerals which are or appear likely to become of considerable value⁹.

The incumbent may also sell glebe land in consideration of a rentcharge¹⁰.

1 This exception includes the outbuildings, garden or other appurtenances of the parsonage house, or such part of the glebe as the Secretary of State considers to be necessary for the convenient enjoyment of that house: Glebe Lands Act 1888, ss 2, 3 (1); Sale of Glebe Land Rules 1927, S.R. & O. 1927 No. 478, r 2; and see note 9 *infra*.

2 He as successor to the Land Commissioners: see COMMONS vol 13 (2009) PARA 423.

3 Glebe Lands Act 1888, s 2; Sale of Glebe Land Rules 1927, r 1. The notices must be in the forms in the Schedule to the rules, with map annexed, and must contain such particulars of the objects and advantages of the proposed sale, and of the situation of the land, as will enable the bishop and patron to judge whether they ought to object: r 1. If the patron is under disability the notice must be given to the guardian or committee: r 1. It was held in a case under a private Act, which gave trustees the right of presentation during a minority, that this did not constitute them patrons for the purpose of consenting to a sale of glebe, and that the guardian was the proper person to consent: *Leigh v Leigh* [1902] 1 Ch 400. For other special provisions relating to patronage, see the Sale of Glebe Land Rules 1927, r 1. The manner of serving notices is prescribed by r 1.

4 Glebe Lands Act 1888, s 8 (2); Sale of Glebe Land Rules 1927, r 1. The notice to the parishioners must be posted on the notice board of the parish church, at the post office and other usual places on three successive Sundays, and if the land is in another parish notice must be given in both places: r 1.

5 Glebe Lands Act 1888, s 6 (2); Sale of Glebe Land Rules 1927, r 1. For the prescribed form of notice, see Schedule, Form 3.

6 *Ibid* r 3. For the mode of application and the information to be given by the incumbent, see rr 3, 4, Schedule, Forms 5, 6 (amended by S.I. 1951 No. 1451). The incumbent must satisfy the Secretary of State that the notices have been duly given: r 1.

7 *Ibid* r 7. The Secretary of State selects the valuer and gives him the necessary instructions, but the valuer's charges are repayable by the incumbent if no sale takes place and, if the Secretary of State thinks it desirable, he may require the incumbent to deposit a sum to defray the valuation cost: r 7.

8 See the Glebe Lands Act 1888, s 3 (1). If a bishop or patron has objected, the Secretary of State must inform the person objecting, in writing, of his reasons for being so satisfied: s 3 (2). Notice must also have been given to the parishioners and may have been required to have been given to mortgagees or creditors: see note 5 supra. As to objections by mortgagees or creditors and provision for securing their rights, see PARA 1161 note 3 post.

9 Ibid s 5 (2). By the Sale of Glebe Land Rules 1927, r 2, the incumbent has no power to sell this land, the sale of which the Secretary of State cannot approve. Under the Glebe Lands Act 1888, s 8 (1), the Secretary of State may require as a condition for giving his approval that the land or some part of it is offered in small parcels for sale or to the local authority for allotments unless the price will thereby be diminished; see also the Sale of Glebe Land Rules 1927, r 8.

10 Law of Property Act 1922, s 43; Law of Property (Amendment) Act 1926, ss 7, 8 (2), Schedule. The repeal of the former provision by the Settled Land Act 1925 is subject to a saving as to glebe land: s 119, Sch. 5. The consideration may consist either wholly or partially of a perpetual rent or a terminable rent consisting of principal and interest combined, and the conveyance must distinguish the part of the terminable annuity attributable to the principal and that attributable to the interest: see the Sale of Glebe Land Rules 1927, r 6 (amended by S.I. 1951 No. 1451).

UPDATE

1160-1161 Alternative method of sale of glebe land, Application of proceeds of sale

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1161. Application of proceeds of sale.

1161. Application of proceeds of sale.

Where the Secretary of State has approved the sale¹ the incumbent may sell the land² at the best price that can reasonably be obtained subject to the conditions required by the Secretary of State and to the provisions of the Glebe Lands Act 1888³. The purchase money is payable to the Secretary of State, whose receipt in the prescribed form is a sufficient discharge to the purchaser⁴.

After payment of the expenses of and incident to the sale the residue of the purchase money is payable by the Secretary of State to the Church Commissioners⁵. Subject to the satisfaction of any mortgage or charge on it, money so received is held by the commissioners as part of their general fund free from any trust in favour of the benefice, but a sum of money equal to the money so held by them is appropriated to the benefice⁶. Where however the residue so transferred is subject to an undischarged mortgage or debt⁷ which cannot be fully satisfied as already mentioned, it is held by the commissioners on a special trust⁸. The money appropriated to the benefice may be applied in redeeming sums charged on the endowments of the benefice or in defraying the costs of improvements in the same manner as money appropriated following a transaction under the Ecclesiastical Leasing Acts⁹ or, on the request of the incumbent, in providing a new parsonage house or glebe buildings, purchasing sites for those houses or buildings or in rebuilding or reconstructing an existing parsonage or glebe buildings¹⁰.

1 The Secretary of State's approval is signified in the manner prescribed by the Sale of Glebe Land Rules 1927, S.R. & O. 1927 No. 478, Schedule, Form 7, and is conclusive evidence that the requirements of the Glebe Lands Act 1888 with respect to the sale have been complied with: s 8 (3). As to the Secretary of State, see PARA 1160 note 2 ante.

2 For a form of conveyance, see Forms and Precedents.

3 See the Sale of Glebe Land Rules 1927, r 10. Even if land is vested in the incumbent 'and his successors', this does not constitute a trust for 'persons by way of succession' so as to make it a settlement within the meaning of the Settled Land Act 1925, and consequently the incumbent does not have the powers of a tenant for life under that Act (*Ex parte Vicar of Castle Bytham, ex parte Midland Rly Co* [1895] 1 Ch 348; approved in *Re Bishop of Bath and Wells* [1899] 2 Ch 138), but the Glebe Lands Act 1888, s 8 (4), expressly provides that in effecting the sale the incumbent has as far as circumstances admit powers similar to those of a tenant for life (as to which see SETTLEMENTS, and may enter into a contract for the sale as a tenant for life may. No material expense should be incurred until the Secretary of State has decided that the sale is expedient: Sale of Glebe Land Rules 1927, r 4. The prescribed notice of the proposal to sell having been given to mortgagees and creditors, any mortgagee or creditor may within one month (r. 1) object on the ground that his security will be damaged, and the Secretary of State may make provisions for securing his rights, or if satisfied that he will not be damaged may approve the sale: Glebe Lands Act 1888, s 6 (2). Where a mortgage debt is repayable by annual instalments or the land is subject to any permanent annual charge in favour of another benefice, these become payable by the incumbent out of the interest of the purchase money, and the Secretary of State may make any provisions for preventing prejudice to the future interest of the benefice, which will be binding on the incumbent for the time being, and the Church Commissioners may set apart an adequate part of the security for the purpose of meeting any such permanent annual charge: Glebe Lands Act 188 ss 6 (2) proviso, 7; Church Commissioners Measure 1947, ss 2, 18 (2).

4 Glebe Lands Act 1888, s 4 (1); Sale of Glebe Land Rules 1927, r 12, Schedule, Form 8.

5 Benefices (Stabilization of Incomes) Measure 1951, s 6 (1); Sale of Glebe Land Rules 1927, r 14 (substituted by S.I. 1951 No. 1451).

6 Benefices (Stabilization of Incomes) Measure 1951, s 4 (1) (b), (2) (a), (b), Schedule, Part I.

7 See the Glebe Lands Act 1888, s 6 (1).

8 Benefices (Stabilization of Incomes) Measure 1951, s 6 (1).

9 Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (2); applying the Ecclesiastical Commissioners (Powers) Measures 1936, s 5, as to which see PARA 1159 ante.

10 Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (3). Application in these ways is subject to the same conditions as are mentioned in the Ecclesiastical Commissioners (Powers) Measure 1936, s 5: Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (3); see PARA 1159 ante.

UPDATE

1160-1161 Alternative method of sale of glebe land, Application of proceeds of sale

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1162. Sale and exchange of parsonage houses.

1162. Sale and exchange of parsonage houses.

Where the residence house, outbuildings, gardens, orchard and appurtenances belonging to a benefice are inconveniently situated or too large, or where for other good and sufficient reason it is thought advisable to sell and dispose of the property or part of it, the incumbent of the benefice or, during a vacancy, the bishop has power, after giving the prescribed notices¹, and with the consent of the Church Commissioners², the parsonages board³ and the bishop (unless he is exercising the power), and, where the property is held under a grant made by or on behalf of the Crown, the Crown Estates Commissioners⁴, to sell⁵ the parsonage house with any contiguous land, not exceeding in all 12 acres, whether or not the parsonage house has ceased to be the residence house of the benefice⁶. Where this power of sale exists the incumbent or the bishop, as the case may be, has power to exchange the residence house for any other house⁷ suitable for the residence of the incumbent, and to pay or receive money for equality of exchange⁸.

On the sale or exchange any hereditament, easement, right or privilege of any kind may be excepted, reserved or granted over or in relation to any land retained for the benefice or disposed of, and any restriction on building or the user of land or with respect to any other thing may be imposed, so far as the law permits⁹.

The money arising from a sale or exchange is payable to the commissioners and their treasurer's receipt is a sufficient discharge to the purchaser¹⁰. For fourteen days after service of the prescribed notice on him the patron has a right of pre-emption over property which it is proposed to sell under this power¹¹. The right is exercisable by written notice to the parsonages board¹², which operates as a contract between the incumbent (or, during the vacancy, the bishop) and the patron for the sale of the property to the patron at a price agreed upon between the patron and the board or by a valuer appointed at the request of the board by the president for the time being of the Royal Institution of Chartered Surveyors and subject to such reservations, restrictions and conditions as the board may require to be imposed¹³.

If the bishop and the parsonages board are satisfied that the price is reasonably satisfactory and the patron and parochial church council do not object, the commissioners are empowered to purchase any property proposed to be sold under the Parsonages Measure 1938¹⁴.

1 See PARA 1140 ante.

2 See the Parsonages Measure 1938, s 3 (1); Church Commissioners Measure 1947, ss 2, 18 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 3 (2). As to the commissioners' duty to consider objections within the prescribed period, see the Parsonages Measure 1938, s 3 (1) (as amended), and PARA 1140 ante.

3 I.e. as the successor to the diocesan dilapidations board: see the Repair of Benefice Buildings Measure 1972, s 29.

4 I.e. as the successors to the Commissioners of Crown Lands: see the Crown Estate Act 1956, s 1 (repealed); Crown Estate Act 1961, s 1.

5 There is also power to pull down the residence house and outbuildings and to sell the materials and site or either: Parsonages Measure 1938, s 1 (1) (ii).

6 Ibid s 1. For forms, see Forms and Precedents. For the general provisions of the Parsonages Measure 1938, see PARAS 1140, 1141 ante. The power of sale under s 1 is not exercisable over or in respect of property vested in trustees (s. 1 (3) (iv)); but the power continues to be exercisable in respect of a house which has ceased to

be the residence house by reason of the constitution of a new residence house under the Measure (s. 1 (4); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule).

7 In relation to an exchange, 'house' includes its outbuildings, gardens, orchards and appurtenances: Parsonages Measure 1938, s 1 (1A); Church Property (Miscellaneous Provisions) Measure 1960, s 1.

8 Parsonages Measure 1938, s 1 (1A); Church Property (Miscellaneous Provisions) Measure 1960, s 1. References to a sale in rules made under the Parsonages Measure 1938, s 15, include an exchange: Church Property (Miscellaneous Provisions) Measure 1960, s 4 (2); and see PARA 1140 ante.

9 Parsonages Measure 1938, s 1 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule.

10 Parsonages Measure 1938, s 1 (5); Church Commissioners Measure 1947, ss 2, 18 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. The commissioners may in their discretion apply the money arising on a sale or exchange in any of the ways laid down in the Parsonages Measure 1938, s 5 (1); Parsonages (Amendment) Measure 1947, s 3 (1); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. These ways of application include payment of the expenses of the sale or exchange; purchasing a new parsonage house and land up to 6 acres; erecting, dividing, enlarging or improving a parsonage house; repayment of the expenses of rendering the property sold or exchanged more readily saleable or exchangeable; repayment of incidental expenses of the incumbent; repayment of sums paid in reduction of loans by the commissioners made for erecting or purchasing a house of residence; repayment of grants by the commissioners for residence houses; and erecting or improving houses or farm buildings belonging to the benefice. Where the property sold or exchanged was originally purchased or built or improved in whole or in part by means of a loan under the Clergy Residences Repair Act 1776 or the Acts or Measures amending or extending that Act (see PARA 1146 ante), or is subject to a mortgage or charge in favour of the commissioners under any other Act or Measure, or where a loan has been made for the purpose of the power contained in the Parsonages Measure 1938, s 1 (1A) (iii) or s 2 (1) (iv) (see PARA 1146 ante), the money arising from the sale or exchange may be applied towards the discharge of the principal money or interest of the loan or under the mortgage or charge: see s 5 (2); Parsonages (Amendment) Measure 1947, s 3 (2); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. Except insofar as so applied the commissioners hold the money for the benefit of the benefice: see the Parsonages Measure 1938, s 5 (3); Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. Interim income arising on the money may be added to the capital or paid to the incumbent: see the Parsonages Measure 1938, s 6; Church Property (Miscellaneous Provisions) Measure 1960, s 4 (1), Schedule. If it is proposed to apply the money in the erection or purchase of a new parsonage house or in the purchase of land for it, or in improving a house so erected or purchased or acquired by way of exchange, or in dividing, enlarging or improving a parsonage house, notice must be given by the commissioners to the patron and to the parochial church council and any representations made by them must be considered: Parsonages Measure 1938, s 7.

11 Ibid s 4 (1).

12 Ibid s 4 (2).

13 Ibid s 4 (3). The Royal Institution of Chartered Surveyors is the successor of the Surveyors' Institution referred to in s 4 (3) (ii). For provisions as to valuations and costs, see s 4 (4).

14 Parsonages (Amendment) Measure 1947, s 1.

UPDATE

1162 Sale and exchange of parsonage houses

TEXT AND NOTES--These provisions apply to any excluded part of a parsonage house so long as that part is or would be vested in the incumbent: Endowments and Glebe Measure 1976 s 34. An incumbent or bishop proposing to exercise any of the powers conferred on him by the 1938 Measure s 1 in respect of the residence house of a benefice for which a team ministry is established must, if the house is or is to be occupied by the incumbent, (1) keep every member of the team informed of matters arising from the proposal, (2) afford every member of the team an opportunity to express views thereon before taking any action to implement the proposal, and (3) have regard to those views before taking any such action: *ibid* s 3(4), added by Team and Group Ministries Measure 1995 s 8(4).

The parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see PARA 520; and see the 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11)) is now required to provide the Church Commissioners with such information as they may require concerning transactions affecting property under the Parsonages Measure 1938: s 5(4) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 7). As from a day to be appointed 1938 Measure s 5 substituted: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 5.

TEXT AND NOTE 2--The consent of the Church Commissioners is not required where (1) the property is not being sold to or exchanged with the incumbent, the bishop, any member, officer, agent or employee of the parochial church council of any parish within the benefice in question or of the diocesan board of finance concerned or the spouse or civil partner, or any child, parent, grandparent, brother or sister of any such person (1938 Measure s 1(3A), (6) (s 1(3A), (3B) added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 3(b); 1938 Measure s 1(6) amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 3(d); the Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 para 2; SI 2005/3129); (2) the incumbent or bishop has obtained a surveyor's report, has advertised the proposed sale or exchange in accordance with the surveyor's advice, and is satisfied that the terms of the sale or exchange are the best that could reasonably be obtained for the benefice (1938 Measure s 1(3B), (6) (s 1(3B) as so added; s 1(6) as amended)). A statement in a document giving effect to any transaction under the 1938 Measure that the consent of the commissioners or the board or both to the terms of the transaction is not required is, if the document is sealed with the seal of the board or is signed on behalf of the board by a person duly authorised by the board, conclusive evidence of that fact: s 9(2B) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 9(b)). Where any transaction under the 1938 Measure affecting property does not contain a statement under s 9(2A) or (2B) then in favour of a person who, whether under the transaction or afterwards, in good faith acquires an interest in the property for money or money's worth the disposition effected by the transaction is valid whether or not any consent of the commissioners or the board which was required to the transaction has been given: s 9(2C) (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 para 5). The 'board' is the parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see PARA 520; and see the 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11)).

As from a day to be appointed 1938 Measure s 3(1) further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 4.

NOTE 5--As to circumstances where the Church Commissioners' consent is not required to the exercise of the power under the 1938 Measure s 1((1)(ii), see s 1(3AA) (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 para 2).

NOTE 6--The power also continues to be exercisable in respect of any property belonging to a benefice, being property which consists of an outbuilding, garden or orchard of a house which has been sold or otherwise disposed of under the 1938 Measure, and any land contiguous to, or appurtenances enjoyed with, such a house or any part of such property: s 1(4); Church of England (Miscellaneous Provisions) Measure 1983 s 4. As from a day to be appointed 1938 Measure s 1(4) further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 2.

NOTE 8--SR & O 1938/636 replaced by the Parsonages Measure Rules 2000, SI 2000/3171 (amended by SI 2007/862).

TEXT AND NOTE 10--The money is now payable to the parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see PARA 520; and see the 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11)) in the first instance, whose receipt is a sufficient discharge to the purchaser, but thereafter the money is to be transferred to the commissioners: Parsonages Measure 1938 s 1(5) (substituted by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 3). As from a day to be appointed 1938 Measure s 1(5) further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 3.

NOTE 10--The commissioners no longer have power to apply the money arising on a sale or exchange in erecting or improving houses or farm buildings belonging to the benefice: Parsonages Measure 1938 s 5(1) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 7(a), Sch 8 Pt II. 1938 Measure ss 1(1A)(iii), 2(1)(iv) repealed: Endowments and Glebe Measure 1976 Sch 8. The 1938 Measure s 5(3) (as substituted by the 1976 Measure s 35(3); and amended by the Pastoral (Amendment) Measure 1982 s 70; and the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 7(b)), provides for the allocation of money, which the commissioners are satisfied should not be applied in any of the ways laid down by the 1938 Measure s 5, to the capital account of the diocesan stipends fund of the diocese to which the benefice belongs or to the pastoral account of that diocese or partly to the one and partly to the other, as the diocesan board of finance may determine. As from a day to be appointed 1938 Measure s 5 substituted, s 6 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 paras 5, 6.

1938 Measure s 7 (as substituted by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 8; and amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 1 para 4), now requires notice to be given by the parsonages board (or by the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see PARA 520; and see the 1938 Measure s 20 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 1 para 11)) to the registered patron (as defined in the Patronage (Benefices) Measure 1986 s 39(1): see PARA 818A.1), to the parochial church councils of all parishes within the benefice and to the Church Commissioners, and requiring the board to forward to the commissioners for consideration any representations made by a patron or council within the period specified in the notice. As from a day to be appointed 1938 Measure s 7 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 1 para 7.

TEXT AND NOTES 11-13--Repealed: Patronage (Benefices) Measure 1986 s 34(1), Sch 5.

TEXT AND NOTE 14--For 'patron' read 'registered patron': 1947 Measure (amended by the Patronage (Benefices) Measure 1986 Sch 4 para 10). 'Registered patron' has the same meaning as in the 1986 Measure (see PARA 818A.1): 1947 Measure s 1 (amended by the 1986 Measure Sch 4 para 10).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(iv) Powers of Sale, Exchange, Partition and Demolition/1163. Demolition of buildings.

1163. Demolition of buildings.

If the report of a diocesan surveyor¹ states that any outbuilding of the parsonage house² appears to be superfluous, the parsonages board may, at any time after confirming the report, notify the incumbent that it intends to demolish the outbuilding³. The incumbent may appeal to the Church Commissioners⁴. If there is no appeal or the notice is upheld, the board may demolish the outbuilding⁵. Where a diocesan surveyor's report states that any glebe building⁶ is superfluous, the board may authorise the incumbent, after consulting with the patron⁷, to demolish the building and sell its materials⁸. Any net proceeds of such a demolition of outbuildings or glebe buildings must be paid to the commissioners, who must hold the money as if it were money arising from a sale of the parsonage house or glebe building, as the case may be, under the Acts and Measures relating to such sales, and may apply it accordingly⁹.

The power to sell a parsonage house and outbuildings¹⁰ includes power to pull down the house and outbuildings and sell the materials¹¹.

A pastoral scheme or order¹² may provide for the demolition of the whole or part of the parsonage house and the disposal of the materials, and the determination of who is to carry out the demolition and bear the expense¹³. The diocesan synod may be scheme¹⁴ authorise the parsonages board to execute works of demolition in pursuance of statutory powers¹⁵, by agreement with the persons on whom those powers are conferred¹⁶.

There is also provision for demolishing buildings on smallholdings of glebe land after a lease has expired¹⁷.

1 As to reports of diocesan surveyors, see PARAS 1168, 1170 post.

2 For the meaning of 'parsonage house', see PARA 1165 note 2 post.

3 Repair of Benefice Buildings Measure 1972, s 5 (4).

4 Ibid s 5 (3), (4). As to the appeal procedure, see PARA 1171 note 7 post.

5 Ibid s 5 (4).

6 For the meaning of 'glebe building', see PARA 1165 note 3 post.

7 'Patron' has the same meaning as in the Pastoral Measure 1968, s 90 (1) (see PARA 813 note 5 ante): Repair of Benefice Buildings Measure 1972, s 31 (1).

8 Ibid s 6 (6).

9 Ibid s 19 (4): see PARA 1158 et seq ante.

10 Ie the power under the Parsonages Measure 1938, s 1: see PARA 1162 ante.

11 Ibid s 1 (1) (ii): see PARA 1162 note 5 ante.

12 As to pastoral schemes, see PARA 856 et seq ante.

13 Pastoral Measure 1968, ss 31 (1) (d), 38 (i): see PARA 876 ante.

14 As to schemes of diocesan synods, see PARA 520 note 1 ante.

15 Ie the powers under the Parsonages Measure 1938, s 1, or the Pastoral Measure 1968, s 31.

16 Repair of Benefice Buildings Measure 1972, s 15 (1) (b). There is also power for a scheme of the diocesan synod to authorise the board to demolish buildings held for charitable purposes connected with the Church of England with the agreement of persons concerned: s 15 (3); see PARA 1176 post.

17 Agriculture Act 1970, s 61 (4) (b), (5).

UPDATE

1163 Demolition of buildings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 6-8--Repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTE 9--Reference to glebe buildings repealed: *ibid* Sch 8. Net proceeds must now be paid to the board: 1972 Measure s 19(4) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 8).

TEXT AND NOTES 13, 15--Demolition is no longer provided for in Pastoral Measure 1983 s 31(1). See instead however Sch 3 para 9(1); para 886.

NOTES 15, 16--Reference to 1968 Measure s 31 omitted: 1972 Measure s 15(1)(b) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 5).

TEXT AND NOTE 17--1970 Act s 61(4), (5) repealed: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 17(b).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1164. The Ecclesiastical Dilapidations Measures.

(v) Repair of Benefice Buildings

1164. The Ecclesiastical Dilapidations Measures.

The statutory provisions relating to dilapidations and the repair of benefice buildings were formerly contained in the Ecclesiastical Dilapidations Measures 1923 to 1951¹. These Measures, save for one section relating to chancel repairs², are now repealed³, although there are transitional provisions⁴. Under the Measures, the powers and duties in respect of dilapidations and repairs were in diocesan dilapidations boards (whose functions are now transferred to parsonages boards) and there are provisions for their dissolution⁵.

1 Ie the Ecclesiastical Dilapidations Measure 1923; Ecclesiastical Dilapidations (Amendment) Measure 1929; Ecclesiastical Dilapidations Measures 1923 to 1929 (Amendment) Measure 1951: see s 4 (2).

2 Ie the Ecclesiastical Dilapidations Measure 1923, s 52, as amended by the Ecclesiastical Dilapidations (Amendment) Measure 1929, s 18, and any interpretation and supplementary provisions applicable to it: Repair of Benefice Buildings Measure 1972, s 35, Sch. 2: see PARA 1100 ante.

3 Ibid s 35, Sch. 2.

4 See ibid s 34, Sch. 1. As to the transfer of functions from a diocesan dilapidations board to a parsonages board and the continuing in office of surveyors, see Sch. 1 paras 1, 2 (2), and PARA 520 ante. The remaining transitional provisions include those relating to the execution of repairs under orders in force on the day appointed for the coming into operation of this Measure in any diocese and the payment of sums due to the Church Commissioners on the appointed day: see Sch. 1 para 2 (1), (3)-(6).

5 See ibid ss 1, 29 and PARA 520 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1165. The Repair of Benefice Buildings Measure 1972.

1165. The Repair of Benefice Buildings Measure 1972.

The statutory provisions relating to repairs¹ to parsonage houses² and glebe buildings³ are now contained in the Repair of Benefice Buildings Measure 1972⁴.

The Measure provides for the appointment or designation in every diocese of a parsonages board⁵ and the appointment of diocesan surveyors⁶. As soon as a parsonages board is appointed or designated for a diocese, the functions of the diocesan dilapidations board for that diocese are exercisable by the parsonages board so appointed or designated⁷.

1 'Repairs' in relation to a parsonage house means such works of repair and replacement as are needed (1) to keep in repair the structure and exterior of the buildings of the parsonage house, including doors, windows, drains, gutters and external pipes (Repair of Benefice Buildings Measure 1972, ss 2 (1) (a), 31 (1)), (2) to keep in repair all its walls, fences, gates, drives and drains, other than those which some person other than the incumbent is wholly liable to repair (s. 2 (1) (b)), and (3) to keep in repair and proper working order the installations in that house for water, gas and electricity supply, for space and water heating and for sanitation, including basins, sinks, baths and other sanitary conveniences, and any other fixtures and fittings if they belong to the benefice but not otherwise (s. 2 (1) (c)). 'Repairs' includes works of interior decoration necessitated in consequence of such work: s 2 (1). 'Building' includes part of a building, and 'benefice' means the office of rector or vicar of a parish or parishes, with cure of souls, but not the office of vicar in a team ministry: s 31 (1).

2 'Parsonage house' means a residence vested in the incumbent of a benefice, being his official residence or the designated residence of a vicar in a team ministry established for the benefice under the Pastoral Measure 1968, s 19 (see PARA 870 ante) except a residence held under a lease which makes the landlord wholly or mainly responsible for the repairs, and includes the buildings, gardens, orchards, paddock, walls, fences and appurtenances necessary for the convenient occupation of the residence: Repair of Benefice Buildings Measure 1972, s 31 (1). The separate letting of part of the residence is not deemed to exclude it from the residence unless it is excluded by a bishop's certificate under the Parsonages Measure 1938, s 11 (see PARA 1140 ante): Repair of Benefice Buildings Measure 1972, s 31 (1).

3 'Glebe building' means any building, wall, fence or work which the incumbent of a benefice is bound by virtue of his office to maintain in repair, not being a parsonage house or comprised in a parsonage house: *ibid* s 31 (1). The provisions of this Measure do not apply to glebe buildings leased by the incumbent for a term of years binding on his successors, except so far as the lessee is not liable under the lease to repair or insure the buildings, but the diocesan surveyor has power of inspection: s 22 (1). As to enforcing the lessee's obligations, see PARA 1174 post.

4 The Measure was to come into operation on a day to be appointed by the Church Commissioners; different days might be appointed for different dioceses (*ibid* s 32 (1)), but the appointment for every diocese was not to be later than 1st April 1974 (s. 32 (1) proviso). The Measure extends to the whole of the provinces of Canterbury and York, except the Channel Islands and the diocese of Sodor and Man, but may be applied to the Channel Islands in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957: Repair of Benefice Buildings Measure 1972, s 36 (2). See also PARA 402 ante. The provisions of this Measure do not authorise the carrying out of any works otherwise than in accordance with the Town and Country Planning Acts: Repair of Benefice Buildings Measure 1972, s 33. Nor does it apply to glebe land while the land is leased to a smallholdings authority or the Minister of Agriculture, Fisheries and Food for the purposes of smallholdings: Agriculture Act 1970, s 61 (4) (a).

5 Repair of Benefice Buildings Measure 1972, s 1 (1). If a parsonages board is not appointed the diocesan board of finance may be designated for the purpose: s 1 (1). The appointment or designation is by scheme of the diocesan synod; and references in the Measure to 'the board' are references to the parsonages board or as the case may be the diocesan board of finance for the diocese concerned: s 1 (1). As to the establishment of parsonages boards, see PARA 520 ante.

6 *Ibid* s 1 (2). See PARA 520 ante.

7 *Ibid* s 29.

UPDATE

1165 The Repair of Benefice Buildings Measure 1972

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--Any dwelling-house which in the Church Commissioners' opinion should be retained for use as a parsonage house, together with buildings, gardens, etc., is deemed to be a parsonage house so long as it is or would be vested in the incumbent: Endowments and Glebe Measure 1976 s 33(1). A house held under a lease making the landlord responsible for repairs is excluded: s 33(2).

1968 Measure s 19 now Pastoral Measure 1983 s 20.

TEXT AND NOTES 3, 4--Repealed in relation to glebe buildings: 1976 Measure Sch 8.

NOTE 3--Repealed: *ibid* Sch 8.

NOTE 4--1972 Measure s 32 repealed: Statute Law (Repeals) Act 2004. 1970 Act s 61(4) repealed: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 17(b).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1166. Incumbent's obligations and powers.

1166. Incumbent's obligations and powers.

The incumbent¹ has a duty to take proper care of a parsonage house², being a duty equivalent to that of a tenant to use premises in a tenant-like manner³. The incumbent must notify the board⁴ of any repairs⁵ to a parsonage house appearing to him to be necessary and, in the case of repairs urgently required for reasons of safety or to prevent further damage or deterioration or to meet a liability to other persons, must do so without delay⁶. The incumbent may carry out as agent of the board such repairs to a parsonage house as the board may generally or specially authorise⁷.

An incumbent must not make additions or alterations to the buildings of a parsonage house or any glebe buildings without the consent of the board and the patron⁸. If the incumbent does so, the board may by notice require him or his personal representative to restore the buildings to the condition in which they were before⁹. If the board intends to refuse its consent it must give notice to the incumbent of its intention¹⁰. A notice from the board informing the incumbent of its intention or requiring him to restore buildings must inform him of his right to make representations¹¹.

The incumbent must keep the board informed of matters affecting buildings and land belonging to the benefice, other than churches¹².

1 In applying the Repair of Benefice Buildings Measure 1972 to a parsonage house which is the residence of a vicar in a team ministry, references to the incumbent include the vicar as well as the incumbent (s. 31 (2)); but there are exceptions where the reference is to the incumbent only (s. 31 (2) proviso). During a vacancy in a benefice, the provisions of the Measure (except s 13 (1), (4)), apply to that benefice as if for the references to the incumbent there were substituted references to the sequestrators or, if the benefice is not under sequestration, to the bishop of the diocese: s 26 (1). Any liability under s 26 (1) of the sequestrators or the bishop must be discharged out of the income of the benefice: s 26 (1) proviso. In s 26 (1), references to the incumbent do not include a vicar in a team ministry: s 31 (2) proviso. For the meaning of 'benefice', see PARA 1165 note 1 ante.

2 For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

3 Repair of Benefice Buildings Measure 1972, s 13 (1). This statutory duty is not imposed on a vicar in a team ministry: s 31 (2) proviso. The duties of the board under the Measure in respect of repairs to parsonage houses does not affect any liability of an incumbent as owner, tenant or occupier of a parsonage house to persons other than the board, but the board must indemnify the incumbent against such liability arising out of the execution of repairs or a failure to execute repairs to a parsonage house if it is not covered by insurance effected by the board under s 12 (see PARA 1182 post): s 13 (2). An incumbent is under no liability to his successor in respect of repairs or failure to execute repairs to a parsonage house: s 13 (2) proviso. As to the liability of an incumbent for damage caused or aggravated by any deliberate act or any default in his duties, see s 13 (4), and PARA 1172 post. As to the board's duty to repair, see s 5, and PARA 1171 post. As to the obligations and powers of an incumbent in respect of glebe, see PARA 1179 post.

4 For the meaning of 'the board', see PARA 1165 note 5 ante.

5 For the meaning of 'repairs', see PARA 1165 note 1 ante.

6 Repair of Benefice Buildings Measure 1972, s 13 (3).

7 Ibid s 13 (5). This power may be exercised following an inspection by a diocesan surveyor or otherwise: s 13 (5). As to inspections by diocesan surveyors, see PARA 1167 post.

8 Ibid s 21 (1). For the meaning of 'patron', see PARA 1163 note 7 ante. The Pastoral Measure 1968, ss 80, 81 (2), 82 (see PARAS 781-784 ante) apply to the giving of the patron's consent under the Repair of Benefice Buildings Measure 1972: s 27 (2).

9 Ibid s 21 (1). If the incumbent or his personal representative refuses or neglects to comply with the notice the board may execute works necessary to restore the buildings and recover the cost of the works from the incumbent or his personal representative: s 21 (2).

10 Ibid s 21 (3).

11 See ibid ss 20 (4), 21 (3). The incumbent must be given at least one month to make representations and may require to meet the board or a committee or representative of the board, who may inspect the building: ss 4 (5), 20 (4).

12 Ibid s 23. This duty applies in particular to matters arising from notices given by public or local authorities or by landlords of property held on lease: s 23.

UPDATE

1166 Incumbent's obligations and powers

NOTE 1--The measure now applies to a team vicar's house as it applies to a parsonage house with the omission of references to the registered patron and to a previous incumbent, and (subject to certain modifications) with the substitution, for references to the incumbent, of references to the diocesan board of finance in which the house is vested and the vicar: 1972 Measure s 31(2) (as substituted by Endowments and Glebe Measure 1976 Sch 5 para 4(6); and amended by Church of England (Miscellaneous Provisions) Measure 2006 s 9).

Section 26(1) proviso amended: Endowments and Glebe Measure 1976 Sch 5 para 4(4).

TEXT AND NOTE 8--An incumbent must not make additions or alterations to the buildings of a parsonage house until after he has consulted the registered patron and, in the case of a parsonage house which is occupied by a person who is a member of the team in a team ministry established by a pastoral scheme under the Pastoral Measure 1983 and not by the incumbent, that person also, and obtained the consent of the board: 1972 Measure s 21(1), (4) (s 21(1) amended by the Endowments and Glebe Measure 1976 Sch 8; the Patronage (Benefices) Measure 1986 s 34(6), Sch 4 para 15; and the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 10; 1972 Measure s 21(4) added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 10). 'Registered patron' has the same meaning as in the 1986 Measure (see PARA 818A.1): 1972 Measure s 31(1); 1986 Measure Sch 4 para 16.

NOTE 8--1972 Measure s 27(2) repealed: Patronage (Benefices) Measure 1986 Sch 5.

TEXT AND NOTES 9-11--Any notice under the 1972 Measure s 20 must inform the incumbent or the person or representative as the case may be, of the right to make representations and the date by which the representations must be made, which is to be not less than one month from the date on which the notice is sent, and s 4(5) applies to the consideration of any representations duly made and the board must then decide whether or not to proceed with the notice: s 21(5) (added by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 11).

TEXT AND NOTE 9--Repealed in relation to glebe buildings: Endowments and Glebe Measure 1976 Sch 8.

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1167. Inspections.

The board¹ must cause an inspection to be made by the diocesan surveyor of all the buildings of each benefice² in the diocese within an initial period of five years³. Subsequent inspections must be made periodically at intervals not exceeding, in the case of any benefice, five years from the last inspection⁴. The board must cause a new building of a benefice to be inspected as soon as possible after it is provided and thereafter at intervals not exceeding five years⁵.

A diocesan synod may by scheme provide for regulating the inspection of buildings⁶.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 'Buildings of a benefice' means any parsonage house and glebe buildings (defined in PARA 1165 notes 2, 3 ante) belonging to a benefice (defined in PARA 1165 note 1 ante): Repair of Benefice Buildings Measure 1972, s 31 (1).

3 Ibid s 3 (1). The initial period of five years is calculated from the commencement of the Measure, as to which see PARA 1165 note 4 ante: s 3 (1).

4 Ibid s 3 (1).

5 Ibid s 3 (2).

6 Ibid s 10 (a). As to schemes made by diocesan synods, see PARA 520 note 1 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1168. Reports.

1168. Reports.

On every inspection¹ the diocesan surveyor must make a report to the board² (1) stating what repairs³ are required, specifying them in detail and estimating their cost, and stating whether they should be executed immediately or otherwise⁴; (2) specifying any repairs to a parsonage house⁵ which are in his opinion necessary by reason of damage caused or aggravated by any deliberate act of the incumbent or a previous incumbent or any default in his duties⁶, and estimating the cost of executing those repairs or, in a case of aggravation, the additional cost attributable to the act or default⁷; (3) stating whether any improvements⁸ to a parsonage house appear to him expedient and, if an estimate appears to him practicable and useful, estimating their cost⁹; (4) stating whether in his opinion a parsonage house should be replaced¹⁰; (5) stating whether any outbuilding of a parsonage house or any glebe building appears to him to be superfluous¹¹ and, if an estimate appears to him to be practicable and useful, estimating the cost of demolition¹²; (6) commenting on the state of the interior decoration of any parsonage house and the state of fixtures and things in any building of the benefice which belong to the benefice¹³; (7) advising on the respective amounts for which the buildings of the benefice should be insured, and specifying the special risks to which they are liable¹⁴.

On the first inspection of the buildings the diocesan surveyor must attach to his report a list of fixtures and things in any building which belong to the benefice, and a list of trees of a parsonage house which in his opinion (after taking such expert advice, if any, as he thinks fit) ought to be preserved¹⁵. On subsequent inspections he must make such additions to and amendments of the lists as may be necessary¹⁶.

A diocesan synod may by scheme provide for regulating the making of reports after inspections¹⁷.

1 As to inspections, see PARA 1167 ante.

2 For the meaning of 'the board', see PARA 1165 note 5 ante.

3 For the meaning of 'repairs', see PARA 1165 note 1 ante.

4 Repair of Benefice Buildings Measure 1972, s 4 (1) (a). Any report on the repairs required for glebe buildings (defined in PARA 1165 note 3 ante) must be based on the incumbent's legal obligation to keep them in repair: s 2 (2). In determining the standard of repair appropriate to any building of a benefice (defined in PARA 1167 note 2 ante) regard must be had to the building's age, character and prospective life and, in particular in the case of a building listed under the Town and Country Planning Act 1971, s 54, its special architectural or historic interest: Repair of Benefice Buildings Measure 1972, s 2 (3).

5 For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

6 I.e. the duties under the Repair of Benefice Buildings Measure 1972, s 13: see PARA 1166 ante.

7 Ibid s 4 (1) (b).

8 'Improvement' of a building includes enlargement and reduction in size, whether by division or otherwise: ibid s 31 (1).

9 Ibid s 4 (1) (c).

10 Ibid s 4 (1) (d).

11 Where a diocesan surveyor reports that an outbuilding is superfluous he need not specify what repairs are required: *ibid* s 4 (2).

12 *Ibid* s 4 (1) (e). As to the demolition of superfluous buildings, see PARA 1163 ante.

13 *Ibid* s 4 (1) (f).

14 *Ibid* s 4 (1) (g). As to the board's duty to insure, see PARA 1182 post.

15 *Ibid* s 4 (3). As to restrictions on felling, lopping or topping trees listed by the surveyor, see s 20, and PARA 1180 post.

16 *Ibid* s 4 (3).

17 *Ibid* s 10 (a). As to schemes made by the diocesan synod, see PARA 520 note 1 ante.

UPDATE

1168 Reports

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Section 2(2) repealed: Endowments and Glebe Measure 1976 Sch 8. 1971 Act s 54 consolidated in Planning (Listed Buildings and Conservation Areas) Act 1990 (see further TOWN AND COUNTRY PLANNING) and 1972 Measure s 2(3) amended accordingly: Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 2.

TEXT AND NOTES 11, 12--Head (5) omitted: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1169. Representations by the incumbent.

1169. Representations by the incumbent.

The board¹ must send a copy of the report² to the incumbent together with a notice stating his right to make representations and the date by which representations must be made³. The board must consider any representations duly made by the incumbent and, if he so desires, give him an opportunity of meeting the board or, at the board's discretion, a committee or representative of the board⁴. If no representations are made within the period allowed by the notice, then on the expiration of that period or, if representations are made, after they have been considered, the board must confirm the report with or without variation⁵.

Where the report specifies any repairs to a parsonage house as being necessary by reason of damage caused or aggravated by any deliberate act or any default⁶ of a previous incumbent the foregoing provisions as to representations apply to the previous incumbent or his personal representative⁷.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 As to the report, see PARA 1168 ante.

3 Repair of Benefice Buildings Measure 1972, s 4 (4). The date specified must not be less than one month from the date on which the notice is sent: s 4 (4). Documents under the Measure may be served, sent or given to any person or body by delivering it to him or the secretary of the body or by leaving it at the person's or body's proper address, or by post: s 27 (1). The proper address, in the case of a body, is its registered or principal office, and in any other case is the person's last known address: s 27 (3).

Where a vacancy occurs or is filled after a report is sent, the right to make representations etc. devolves on the sequestrators, the bishop or the new incumbent, as the case may be: s 26 (2); see PARA 1166 note 1 ante.

4 Ibid s 4 (5). Before confirming the report the board may make inspections and obtain professional or other advice: s 4 (5).

5 Ibid s 4 (6). If it proposes to vary the report otherwise than to give effect to the incumbent's representations the board must give him the opportunity of making representations under s 4 (5) with respect to the proposal: s 4 (6) proviso. The board must notify the incumbent of any variation it makes: s 4 (6).

6 Ie any default in the incumbent's duties under ibid s 13 (see PARA 1166 ante): s 4 (1) (b), (7).

7 Ibid s 4 (7).

UPDATE

1169 Representations by the incumbent

NOTE 3--1972 Measure s 27(3) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 11.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1170. Interim inspections and reports.

1170. Interim inspections and reports.

In addition to the periodic inspections required¹, the board² may at any time cause an inspection of any building of a benefice³ to be made by a diocesan surveyor, together with a report on it⁴. If it relates to a parsonage house⁵ such a report may specify repairs⁶ which are necessary by reason of damage caused or aggravated by a deliberate act or default⁷ in the duties of an incumbent or a previous incumbent and may estimate the cost of the repairs or the additional cost attributable to the act or default⁸. In such a case the provisions for making representations apply⁹.

The diocesan surveyor may inspect and report to the board on any glebe building¹⁰ subject to a lease, and must do so if requested by the board or the incumbent¹¹.

1 As to these inspections, see PARA 1167 ante.

2 For the meaning of 'the board', see PARA 1165 note 5 ante.

3 For the meaning of 'building of a benefice', see PARA 1167 note 2 ante.

4 Repair of Benefice Buildings Measure 1972, s 8 (1).

5 For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

6 For the meaning of 'repairs', see PARA 1165 note 1 ante.

7 In default under the Repair of Benefice Buildings Measure 1972, s 13 (see PARA 1166 ante): ss 4 (1) (b), 8 (3).

8 Ibid s 8 (3).

9 Ibid s 8 (3). As to these provisions, see s 4 (4)-(7), and PARA 1169 ante.

10 For the meaning of 'glebe building', see PARA 1165 note 3 ante.

11 Repair of Benefice Buildings Measure 1972, s 22 (1). The provisions of the Measure do not apply to glebe buildings leased by an incumbent so as to bind his successors: see PARA 1165 note 3 ante.

UPDATE

1170 Interim inspections and reports

TEXT AND NOTES 10, 11--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1171. Execution of repairs to parsonage houses.

1171. Execution of repairs to parsonage houses.

The board¹ must, within twelve months of confirming the diocesan surveyor's report², commence all repairs specified in the report which relate to the parsonage house the execution of which is stated to be immediately necessary, and must complete them as soon as possible³. It must also execute all other repairs specified in the report which relate to a parsonage house within such period as may be recommended in the report or, if no period is recommended, as the board thinks expedient⁴.

If, however, it appears to the board and the bishop of the diocese that a parsonage house or a part of it should be sold, exchanged or demolished, and for that reason it is not necessary or desirable to execute the repairs or all the repairs, the board may, within six months of confirming the report, notify the incumbent that such repairs as are specified are not to be executed, giving its reasons⁵, and informing him of his right to make representations to the board⁶. The board must notify him of its decision, from which he may appeal to the Church Commissioners⁷.

If it appears to the board, whether as a result of an interim inspection or otherwise, that any repairs to a parsonage house are necessary, it may execute those repairs⁸, but if the repairs are not specified in an interim report the board may not execute the repairs without the incumbent's consent⁹.

Where any party wall or fence of a parsonage house or any drive, drain or other appurtenance of a parsonage house is maintainable by the incumbent in common with other persons, the board may make agreements with those other persons for the execution and financing of necessary works of repair and replacement in respect of them, and may enforce the liability of those persons in respect of the repairs¹⁰.

A diocesan synod may by scheme provide for regulating the execution of repairs to buildings of a benefice¹¹.

The board may defray the cost of repairs to any residence of an incumbent in the diocese not being a parsonage house, or any repairs to a parsonage house held on lease, being repairs for which the incumbent is liable¹².

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 As to confirmation of the report, see PARA 1169 ante.

3 Repair of Benefice Buildings Measure 1972, s 5 (1) (a).

4 Ibid s 5 (1) (b). The board's duties do not affect the incumbent's liabilities to other persons: see s 13 (2), and PARA 1166 ante.

5 Ibid s 5 (1) proviso.

6 Ibid s 5 (2). The incumbent is to be given not less than one month from the date on which the notice is sent in which to make representations, which must be limited to the question of what repairs are not to be executed: s 5 (2). The board must consider any representations duly made and allow the incumbent to meet it or its committee or representatives: ss 4 (5), 5 (2).

7 Ibid s 5 (3). The appeal must be brought within one month from the notification of the decision, and the commissioners must consult with the board and the incumbent before deciding the appeal: s 5 (3).

8 Ibid s 8 (2).

9 Ibid s 8 (2) proviso.

10 Ibid s 9. The board may, in respect of a parsonage house or other residence of an incumbent in the diocese, make good to the incumbent or defray on his behalf any payments for the maintenance of a private road, common drive, party fence or wall, or other thing maintainable in common: s 16 (1) (b).

11 Ibid s 10 (b). A scheme made by the diocesan synod does not take effect until approved by the commissioners: s 30 (1).

12 Ibid s 16 (2).

UPDATE

1171 Execution of repairs to parsonage homes

NOTE 11--A copy of any scheme made by a diocesan synod under the 1972 Measure must be sent to the commissioners and filed in the diocesan registry: s 3(1) (as substituted by Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 12).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1172. Incumbent's liability for cost of repairs.

1172. Incumbent's liability for cost of repairs.

Where the report of a diocesan surveyor, whether on a periodic¹ or interim inspection², specifies any repairs to a parsonage house as necessary by reason of damage caused or aggravated by any deliberate act of the incumbent or a previous incumbent or any default in his duties³, the board⁴ may, on completion of the repairs, by notice require the incumbent concerned or his personal representative to pay to it the whole or part of the cost certified by the diocesan surveyor to be attributable to that act or default and, if the notice is not complied with, the board may take proceedings for its enforcement⁵.

1 Ie under the Repair of Benefice Buildings Measure 1972, s 3; see PARA 1167 ante.

2 Ie under ibid s 8: see PARA 1170 ante.

3 Ie the incumbent's duties under ibid s 13: see PARA 1166 ante.

4 For the meaning of 'the board', see PARA 1165 note 5 ante.

5 Repair of Benefice Buildings Measure 1972, s 13 (4). It is open to the defendant in such proceedings to show that the cost so certified is not attributable to such act or default or exceeds the cost so attributable: s 13 (4) proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1173. Building ceasing to be parsonage house.

1173. Building ceasing to be parsonage house.

Where the Church Commissioners notify the board¹ that they have consented or agreed to the sale, exchange² or demolition of a parsonage house, the board's duties in respect of the parsonage house cease, save for limited duties to insure and repair³. Where a parsonage house ceases, otherwise than in consequence of a sale, exchange or demolition, or proposals for them, to be a parsonage house, most of the statutory provisions⁴ relating to the repair of the parsonage house cease⁵.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 In this context 'sale' and 'exchange' includes the sale or exchange of the leasehold interest where the parsonage house is held on lease: Repair of Benefice Buildings Measure 1972, s 14 (4). For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

3 Ibid s 14 (1). The board must keep the insurance in force until the sale, exchange or demolition: s 14 (1) (a). As to the duty to insure generally, see s 12, and PARA 1182 post. It must carry out such repairs as it thinks necessary or desirable to facilitate a proposed sale or exchange: s 14 (1) (b). So long as the parsonage house remains in occupation the board must carry out such repairs as it thinks necessary for such occupation: s 14 (1) (c). Any accrued liability of the board under s 13 (2) (see PARA 1166 note 3 ante) or of the incumbent or his personal representative under s 13 (4) (see PARA 1172 ante), is not affected: s 14 (3).

4 The provisions referred to are those contained in ibid ss 3-5, 8-13, as far as they relate to parsonage houses: s 14 (2).

5 Ibid s 14 (2). The provisions relating to accrued liabilities described in note 3 supra, apply in this case: see s 14 (3).

UPDATE

1173 Building ceasing to be parsonage house

TEXT AND NOTES 1-3--Now read 'Where the board is satisfied that a parsonage house may be sold or exchanged without the consent of the Church Commissioners under the Parsonages Measure 1938 or is notified by the Commissioners that they have consented to the sale or exchange of a parsonage house, or that the Commissioners are satisfied that any objection raised under s 3(1) (see PARA 1140) ought not to prevent any such sale or exchange, the board's duties in respect of the parsonage house cease, save for limited duties to insure and repair': 1972 Measure s 14(1) (amended by Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 4; Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1174. Execution of repairs to glebe buildings.

1174. Execution of repairs to glebe buildings.

The board¹ must by order require the incumbent to execute, within the time specified in the order, the repairs specified in the diocesan surveyor's report² which relate to glebe buildings³. If the incumbent fails to execute any such repairs within the time so specified, the board may by notice require him to execute the repairs forthwith⁴. If at the expiration of one month from the date of the notice the default is continuing, the board may, with the consent of the bishop of the diocese, execute the repairs; and the cost is recoverable as a debt due to the board from the defaulting incumbent or his personal representative⁴.

If the board considers that repairs to a glebe building which are specified in an interim report⁵ of a diocesan surveyor are required without delay in order to prevent further damage, it may by order require the incumbent to execute those repairs⁶.

If the diocesan surveyor has reported on a glebe building subject to a lease⁷, and it appears that repairs for which the lessee is responsible ought to be carried out, the board may send a copy of the report to the incumbent and require him to enforce the lessee's repairing covenants⁸. If the incumbent fails to do so or requests the board to do so on his behalf, it may take or continue proceedings to enforce the covenants on behalf of the incumbent and may recover its costs from the incumbent or his personal representative⁹.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 As to reports, see PARAS 1168, 1170 ante.

3 Repair of Benefice Buildings Measure 1972, s 6 (1). For the meaning of 'glebe building', see PARA 1165 note 3 ante. The order may specify different times for different repairs and may distinguish between repairs stated in the report to be immediately necessary and other repairs: s 6 (1). The order may be varied to extend the time for execution of the repairs: s 6 (2). If a vacancy occurs after an order, the duty to execute the repairs devolves on the incumbent's successors, including the sequestrators or bishop during the vacancy (s. 26 (4)), but if the previous incumbent has entered into a contract for the execution of the repairs he or his personal representative has three months to execute the repairs, and his successors are not liable to do so during that period (s. 26 (3)). This provision is subject to any variation made by the board or any agreement between the outgoing incumbent or his personal representative and the new incumbent: s 26 (3) proviso.

4 Ibid s 6 (3). If it appears to the board that the incumbent cannot reasonably meet the estimated cost of the repairs which he is required to execute by the order the board may advance to him the whole or part of the cost on such terms as to the repayment of the advance and interest on it and otherwise as it may determine, and the amount of the advance and interest is deemed to be charged on the revenues of the benefice: s 6 (4). Where sums are due from the incumbent to the board the Church Commissioners may retain sums payable by them to the incumbent and pay them to the board: s 6 (5). As to advances, see also PARA 1178 note 2 post.

5 Ie a report made under ibid s 8: see PARA 1170 ante.

6 Ibid s 8 (4). The provisions of s 7 (see PARA 1175 post) apply to the order: s 8 (4). The duty to comply with the order devolves on the incumbent's successors subject to the power for the previous incumbent or his personal representative to carry out a contract: see s 26 (3), (4); and note 3 supra.

7 Ie under ibid s 22 (1): see PARA 1170 text and note 11 ante.

8 Ibid s 22 (2). These provisions may not apply to smallholdings: see PARA 1165 note 4 ante.

9 Ibid s 22 (3).

UPDATE

1174 Execution of repairs to glebe buildings

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1175. Schemes for securing repair of glebe buildings.

1175. Schemes for securing repair of glebe buildings.

A diocesan synod may by scheme¹ provide for incumbents to pay to the board² annual assessments in respect of the cost of repairs³ to glebe buildings⁴ required by order of the board and for the board to recover this money⁵, for crediting such payments to a separate account, and for making the money in such account available for meeting the cost of such repairs⁶. Sums due from an incumbent under a scheme are deemed to be charged on the revenues of the benefice⁷.

1 Generally as to schemes made by diocesan synods, see PARA 520 note 1 ante.

2 For the meaning of 'the board', see PARA 1165 note 5 ante.

3 For the meaning of 'repairs', see PARA 1165 note 1 ante.

4 For the meaning of 'glebe building', see PARA 1165 note 3 ante.

5 Repair of Benefice Buildings Measure 1972, s 7 (1) (a).

6 Ibid s 7 (1) (b).

7 Ibid s 7 (2). Where sums are due from the incumbent to the board the Church Commissioners may retain sums payable by them to the incumbent and pay them to the board: ss 6 (5), 7 (2).

UPDATE

1175 Schemes for securing repair of glebe buildings

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1176. Extension of powers by schemes.

1176. Extension of powers by schemes.

The diocesan synod may by scheme¹ (1) authorise the board² to execute works of interior decoration of parsonage houses³ by agreement with the incumbent⁴ and works of improvement, demolition or erection of parsonage houses⁵ by agreement with persons on whom powers to do this work are conferred⁶; (2) provide for the inspection by a diocesan surveyor of buildings (other than parsonage houses) used as residences by clergy or lay workers of the Church of England and for making reports to the board on such inspections⁷; and (3) provide for authorising the board to execute works of repair, interior decoration, improvement, demolition or erection of any buildings held for charitable purposes connected with the Church of England by agreement with the persons having the management or control of those buildings⁸.

Pastoral schemes and orders⁹ may provide for the improvement or repair of residences¹⁰.

1 Generally as to schemes made by a diocesan synod, see PARA 520 note 1 ante. Schemes under s 15 must provide that the cost of works, inspections and reports (except in respect of an incumbent's residence, not being a parsonage house (s. 15 (4) proviso)) are not a charge on the parsonages fund: s 15 (4). As to this fund, see PARA 1178 post. The powers extend to buildings intended to be used for the purposes mentioned in s 15: s 15 (5).

2 For the meaning of 'the board', see PARA 1165 note 5 ante.

3 For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

4 Repair of Benefice Buildings Measure 1972, s 15 (1) (a).

5 See under the Parsonages Measure 1938, ss 1-2A (see PARAS 1140-1142, 1163 ante), and under the Pastoral Measure 1968, s 31 (see PARA 876 ante): Repair of Benefice Buildings Measure 1972, s 15 (1) (b).

6 Ibid s 15 (1) (b).

7 Ibid s 15 (2).

8 Ibid s 15 (3).

9 As to pastoral schemes, see PARA 856 et seq ante.

10 Pastoral Measure 1968, ss 31 (1) (b), 38 (i): see PARA 876 ante.

UPDATE

1176 Extension of powers by schemes

NOTE 1--For 'are not a charge on the parsonages fund' read 'are met by any fund or funds capable of being used for the purposes in question': 1972 Measure s 15(4) (amended by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 6). 1972 Measure s 15(4) proviso repealed: Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 6.

NOTE 5--Reference to 1968 Measure s 31 omitted: 1972 Measure s 15(1)(b) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 5). 1968 Measure consolidated in Pastoral Measure 1983: see s 31.

TEXT AND NOTES 9, 10--Improvement or repair no longer provided for by 1983 Measure s 31(1). See instead, however, s 33(5) (see PARA 865).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1177. Powers of entry.

1177. Powers of entry.

For the purpose of carrying out any inspection of¹ or executing repairs to² a building of a benefice³ the diocesan surveyor or the board⁴, or any persons employed or authorised by the surveyor or the board, may enter the building at all reasonable hours during the daytime⁵. Except where repairs are suddenly and urgently needed, the board or the surveyor must first use their best endeavours to agree with the incumbent the times for the inspection or repairs, and in default of agreement must give at least fourteen days' notice to the incumbent⁶.

1 As to inspections, see PARAS 1167, 1170 ante.

2 I.e. under the duties or powers of inspection or repair under the Repair of Benefice Buildings Measure 1972. For the meaning of 'repairs', see PARA 1165 note 1 ante.

3 For the meaning of 'building of a benefice', see PARA 1167 note 2 ante.

4 For the meaning of 'the board', see PARA 1165 note 5 ante.

5 Repair of Benefice Buildings Measure 1972, s 11.

6 Ibid s 11 proviso.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(v) Repair of Benefice Buildings/1178. Finance.

1178. Finance.

The board¹ must open, hold and manage a parsonages fund into which money must be paid under the provisions of the Repair of Benefice Buildings Measure 1972², and all expenditure of the board, except expenditure defrayed out of a specific trust fund³ or by direct payments of parochial church councils⁴, must be defrayed out of the fund⁵. The diocesan synod must by scheme⁶ provide for the submission to the synod of annual estimates of the expenditure of the board and proposals for meeting that expenditure⁷, and may by scheme provide for the payment by parochial church councils of annual contributions towards the board's estimated expenditure, or for the direct payment by parochial church councils of the cost of repairs to parsonage houses of their own parishes⁸. The Church Commissioners may make grants out of their general fund to the board for payment into the parsonages fund⁹. The board may accept gifts and bequests¹⁰. In general all money received by the board must be paid into the fund¹¹.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 Repair of Benefice Buildings Measure 1972, s 17 (1) (2). Sums standing to the credit of the repair accounts, the deferred repair accounts, the insurance accounts and the administration account under the Ecclesiastical Dilapidations Measure 1923, ss 29, 30, 34, 39 (all repealed), were paid into the parsonages fund: Repair of Benefice Buildings Measure 1972, s 18 (1), (4). The payment into the fund was after making a deduction for glebe buildings and for discharging loans and interest outstanding in respect of parsonage houses: see s 18 (1) proviso. Money paid into the fund from the repair accounts and deferred repair accounts is to be treated as a reserve, and only the income is applicable for the fund's general purposes: s 18 (2). Up to two-fifths of the original amount of the rest may be applied by the board for meeting and temporary excess of expenditure over income (subject to its being replaced within the same accounting year), meeting the cost of extraordinary repairs to a parsonage house, and making advances to incumbents under s 6 (4) (see PARA 1174 ante): s 18 (3). After 10th February 1977 the Church Commissioners may, if expedient, authorise an increase for a particular diocese in the total amount to be so applied out of the reserve, and, in addition, on the commissioners' application, the General Synod may by resolution increase the two-fifths proportion for all dioceses: s 18 (3) proviso. As to the application of sums apportioned to glebe buildings, see Sch. 1 para 2 (7). The board has the same powers of investment in respect of the fund as trustees of trust funds (s. 17 (2)), although if there is a separate parsonages board the diocesan synod may by scheme provide that the board's management powers in respect of the fund and the receipt of money payable into the fund are to be exercisable by the diocesan board of finance on behalf of the board (s. 17 (2) proviso). Generally as to schemes, see PARA 520 note 1 ante.

3 Where the purposes of a charity include the repair of parsonage houses the funds of the charity continue to be applicable for that purpose notwithstanding the board's responsibilities as to repairs: *ibid* s 25.

4 See *ibid* s 19 (2), and note 8 *infra*.

5 *Ibid* s 17 (3). This is, however, without prejudice to s 15 (4), for which see PARA 1176 note 1 ante.

6 As to schemes made by the diocesan synod, see PARA 520 note 1 ante.

7 Repair of Benefice Buildings Measure 1972, s 19 (1). Where there is a separate parsonages board the board must consult with the diocesan board of finance before submitting the estimates: s 19 (1).

8 *Ibid* s 19 (2) (a), (b). Such contributions and direct payments may be combined in a scheme (s. 19 (2) (c)), and any part of a contribution not required may be refunded by the board (s. 19 (2) (a)).

9 *Ibid* s 19 (3).

10 *Ibid* s 19 (5).

11 *Ibid* s 19 (6). This is subject to the specific provision of s 19 (4) relating to insurance money (see PARA 1182 post), to any scheme under s 7 (see PARA 1175 ante) and any specific trusts: s 19 (6).

UPDATE**1178 Finance**

TEXT AND NOTES 1-5--Parsonages funds have been dissolved and all moneys held in the fund must be paid into any fund or funds which may be used for the purposes of defraying the cost of the provision, improvement or repair of parsonage houses: Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 8(2). All expenditure of the board, except expenditure defrayed out of a specific trust fund, must be defrayed out of any fund or funds capable of being applied for the purposes in question: 1972 Measure s 17 (substituted by the 2005 Measure Sch 2 para 8(1)). 1972 Measure s 18 repealed: 2005 Measure Sch 2 para 9.

TEXT AND NOTE 9--Now the Commissioners may make grants out of their general fund to the board for payment into any fund or funds capable of being applied for the purposes of the provision, improvement or repair of parsonage houses: 1972 Measure s 19(3) (amended by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 10).

TEXT AND NOTE 11--Now in general all money received by the board must be paid into any fund or funds capable of being applied for the purposes of the provision, improvement or repair of parsonage houses: 1972 Measure s 19(6) (amended by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 10).

NOTE 11--1972 Measure s 19(4) now as substituted by Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 8. 1972 Measure s 7 repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1179. Power to work glebe.

(vi) Miscellaneous Powers and Duties

1179. Power to work glebe.

An incumbent may cultivate glebe in any way he thinks fit, provided he does not commit any waste¹. He may work open mines² for his own benefit³, but may not open new mines⁴ even with the consent of the patron⁵, except to get stone to do repairs⁶. If the incumbent works minerals in excess of his rights the patron may obtain an injunction to prevent him⁷ and, according to the better opinion, is entitled to an account⁷; and, in case of collusion between the incumbent and the patron, the Ordinary may take proceedings⁸. The Church Commissioners also may obtain an injunction⁹. The ecclesiastical courts might formerly punish improper workings by deprivation¹⁰. The successor to a benefice, however, cannot, in an action for dilapidations, recover anything against the estate of a former incumbent in respect of minerals improperly worked¹¹.

1 Neglect by an incumbent to cultivate glebe land in a husbandlike manner does not render him or his executors liable in an action by a succeeding incumbent, although he or they may be liable for leaving the buildings, hedges and fences in a state of decay: *Bird v Relph* (1833) 4 B & Ad 826; and see *Ross v Adcock* (1868) LR 3 CP 655. As to the incumbent's liability to repair glebe buildings under the Repair of Benefice Buildings Measure 1972, see PARA 1174 ante. As to waste and dilapidations, see Phillimore, Ecclesiastical Law (2nd Edn) 1254.

2 *Ecclesiastical Comrs v Wodehouse* [1895] 1 Ch 552 at 562.

3 *Knight v Mosely* (1753) Amb 176; *Huntley v Russell* (1849) 13 QB 572 at 591; *Duke of Marlborough v St John* (1852) 5 De G & Sm 174; *Bartlett v Phillips* (1859) 4 De G & J 414.

4 A bishop was formerly in the same position as an incumbent as regards the working and opening of mines, but his powers and limitations in this respect are now obsolete, episcopal estates being vested in the Church Commissioners by the Ecclesiastical Commissioners Act 1860, s 2 (repealed) (see PARA 363 ante, 1233 post), and episcopal residences being similarly vested by schemes made under the Episcopal Endowments and Stipends Measure 1943, ss 1, 2 (see PARA 482 ante). A dean and chapter cannot work mines beneath any corporate land vested in them, as they may not commit waste: *Dean and Chapter of Worcester's Case* (1605) 6 Co Rep 37a; *Ross v Adcock* (1868) LR 3 CP 655 at 664.

5 *Ecclesiastical Comrs v Wodehouse* [1895] 1 Ch 552 at 562.

6 *Knight v Mosely* (1753) Amb 176. It is uncertain whether the stone may be sold and the proceeds applied in purchasing other stone more convenient for the purpose: see *Duke of Marlborough v St John* (1852) 5 De G & Sm 174.

7 *Sowerby v Fryer* (1869) LR 8 Eq 417; see contra *Knight v Mosely* (1753) Amb 176; *Holden v Weekes* (1860) 1 John & H 278.

8 *Holden v Weekes* (1860) 1 John & H 278.

9 *Ecclesiastical Comrs v Wodehouse* [1895] 1 Ch 552. As to the Church Commissioners, see PARA 363 ante.

10 *Ross v Adcock* (1868) LR 3 CP 655 at 664. Censures, including deprivation, are now pronounced for offences under the Ecclesiastical Jurisdiction Measure 1963: see s 1. Such offences include serious, persistent or continuous neglect of duty: see s 14 (1) (b) (ii). Improper working of minerals might be so punishable. As to ecclesiastical offences and censures generally, see PARA 1350 et seq, 1372 et seq post.

11 *Ross v Adcock* (1868) LR 3 CP 655.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1180. Felling of trees.

1180. Felling of trees.

Timber growing on any glebe land must not be felled without the consent of the board¹, unless the felling is necessary to avoid immediate danger to the occupants or general public². If it appears to the board that timber growing on glebe land ought, as a matter of good management, to be felled it may by notice require the incumbent to fell it and, if he fails to do so, may itself do so and sell the timber³. The incumbent may make representations before the board exercises its power to fell the timber⁴. The consent of the patron⁵ or Ordinary is not necessary for any felling under the foregoing provisions⁶. The net proceeds of any such felling and any money recovered by the board in respect of wrongful felling⁷ may be applied for the purpose of planting new trees and, subject thereto, must be paid to the Church Commissioners and treated in the same way as the net proceeds of the demolition of any glebe building⁸. Where the expense to the incumbent of felling trees exceeds the proceeds, the board may defray the amount of the excess⁹. The foregoing provisions relating to timber do not apply to glebe land leased to the incumbent for a term of years binding on his successors¹⁰.

1 Repair of Benefice Buildings Measure 1972, s 20 (1). For the meaning of 'the board', see PARA 1165 note 5 ante. This restriction applies also to the felling, lopping or topping of trees included in the current list scheduled to the report of the diocesan surveyor under s 4 (3) in respect of a parsonage house (see PARA 1168 ante), and to the felling of timber growing in a churchyard: s 20 (1). As to timber growing in churchyards, see PARA 1083 ante. As to the restrictions on the felling of trees imposed by the Forestry Act 1967, Part II (ss. 9-36), see FORESTRY vol 52 (2009) PARA 120 et seq. As to the power of an incumbent or other ecclesiastical corporation to enter into a forestry dedication covenant, see s 5 (4), Sch. 2 para 3, and FORESTRY vol 52 (2009) PARA 119.

2 Repair of Benefice Buildings Measure 1972, s 20 (1) proviso.

3 Ibid s 20 (3). This applies also to timber growing in a churchyard: s 20 (3). The board's workmen and agents have powers of entry under s 11 (see PARA 1177 ante) for the purpose of felling and sale: s 20 (3). If the trees are wrongfully felled, lopped or topped, the board may require the incumbent or his personal representative to pay the board the net value of the timber or, in the case of a parsonage house, the resulting depreciation as estimated by the surveyor, and may take proceedings to recover payment: s 20 (2). In any such proceedings the defendant may show that the timber had no net value or, as the case may be, that there was no depreciation, or that the amount required is excessive: s 20 (2) proviso.

4 Ibid s 20 (4). The board's notice must give the incumbent not less than one month after the date on which the notice is sent to make representations (s. 20 (4)); and he may require to meet the board, which may make inspections and take advice before deciding whether or not to proceed with the notice (ss. 4 (5), 20 (4)).

5 For the meaning of 'patron', see PARA 1163 note 7 ante.

6 Repair of Benefice Buildings Act 1972, s 20 (5).

7 See ibid s 20 (2), and note 3 supra.

8 Ibid s 20 (6). Where the money recovered by the board is in respect of trees of a parsonage house (see note 3 supra) it must be paid to the commissioners and treated in the same way as the net proceeds of the demolition of outbuildings of a parsonage house: s 20 (6). As to the application of such money, see s 19 (4), and PARA 1163 ante.

9 Ibid s 20 (7).

10 Ibid s 22 (4).

UPDATE

1180 Felling of trees

TEXT AND NOTES--1972 Measure s 20 repealed with respect to the felling of trees on glebe land and in churchyards: Endowments and Glebe Measure 1976 Sch 8; Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 6(4); Church of England (Miscellaneous Provisions) Measure 1995 s 13.

TEXT AND NOTE 6--In 1972 Measure s 20(5) for the word 'patron' read 'registered patron': Church of England (Miscellaneous Provisions) Measure 2006 s 9.

NOTE 6--Repair of Benefice Buildings Act 1972 should read Repair of Benefice Buildings Measure 1972.

TEXT AND NOTE 8--Words 'paid to the Church Commissioners and' omitted: 1972 Measure s 20(6) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 9).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1181. Outgoings of residence houses.

1181. Outgoings of residence houses.

In respect of a parsonage house² or other residence of an incumbent, the board¹ may make good to the incumbent or defray general, water or drainage rates³, maintenance charges in respect of private roads, common drives, party fences or walls or other things maintainable in common⁴, payments in respect of rentcharges or other charges⁵, rent or other payments under a lease or tenancy⁶, and periodical payments in respect of loans made by the Church Commissioners for the provision or improvement of the parsonage house or residence and any accrued interest thereon⁷. The board may defray the cost of repairs to the residence, not being a parsonage house, or any repairs to a parsonage house held on lease, being repairs for which the incumbent is liable⁸.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 For the meaning of 'parsonage house', see PARA 1165 note 2 ante.

3 Repair of Benefice Buildings Measure 1972, s 16 (1) (a).

4 Ibid s 16 (1) (b).

5 Ibid s 16 (1) (c).

6 Ibid s 16 (1) (d).

7 Ibid s 16 (1) (e).

8 Ibid s 16 (2).

UPDATE

1181 Outgoings of residence houses

TEXT AND NOTES--In respect of any parsonage house in the diocese, the board has power to defray on behalf of the Diocesan Board of Finance for the diocese any periodical payment in respect of a loan made by the Commissioners to that Board for the provision, improvement, division or demolition of that house or the safeguarding of the amenities thereof and any accrued interest thereon: 1972 Measure s 16(3) (added by Endowments and Glebe Measure 1976 Sch 5 para 4). In respect of any building in the diocese other than a parsonage house or other residence of an incumbent in the diocese used as a residence by any person declared by the bishop to be engaged in the cure of souls within the diocese, the board has power to defray on behalf of the Diocesan Board of Finance for the diocese the cost of any such payments as are referred to in the 1972 Measure s 16(1)(a)-(d) and the costs, charges and expenses of any sale: s 16(4) (added by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 7).

TEXT AND NOTE 7--Omitted: Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1182. Insurance of benefice buildings.

1182. Insurance of benefice buildings.

The board¹ must insure all the parsonage houses and glebe buildings in its diocese². The board must make and prosecute all claims arising under any such insurance, and all money payable under a policy must be paid to the board³. If the insurance office elects to pay the insurance money instead of making good the damage, the board must, in the case of a parsonage house, make good the damage and, in the case of a glebe building, apply the money in defraying the cost of making good the damage⁴. The premiums paid by the board in respect of policies effected on glebe buildings are recoverable from the incumbent or his personal representative and are deemed, without any assurance, to be charged on the revenues of the benefice⁵.

1 For the meaning of 'the board', see PARA 1165 note 5 ante.

2 Repair of Benefice Buildings Measure 1972, s 12 (1). For the meaning of 'parsonage house' and 'glebe building', see PARA 1165 notes 2, 3 ante. Parsonage houses must be insured against all risks included in the usual form of householder's policy relating to buildings: s 12 (1) (a). Glebe buildings must be insured against damage by fire and any other risks agreed between the board and the incumbent: s 12 (1) (b). Any question arising as to the risks to be covered is to be conclusively determined by the Church Commissioners: s 12 (1). The insurance must be effected with the Ecclesiastical Insurance Office Ltd or such other insurance office as is selected by the board and approved by the commissioners: s 12 (1). The sums in the insurance account of a benefice apportioned to glebe buildings under s 18 (1) (see PARA 1178 ante) must be applied by the board in paying the premiums in respect of glebe buildings: s 34, Sch. 1 para 2 (7) (a).

3 Ibid s 12 (2).

4 Ibid s 12 (3). If the incumbent and the patron consent, the board may make good the damage with alterations or omit to make good the whole or part of the damage: s 12 (3) proviso. The duty to make good any damage to a building includes its reinstatement after destruction: s 12 (5). Any insurance money not applied under s 12 (3) or in meeting any liability covered by the policy must be paid to the Church Commissioners, who must hold and apply such money as if it were money arising from a sale of the parsonage house or glebe building, as the case may be: s 19 (4). As to such sales, see PARA 1158 et seq ante.

5 Ibid s 12 (4). Sums due to the board in respect of such premiums may be deducted from money received under the policy, and, where sums are due from the incumbent, the commissioners may retain sums payable by them to the incumbent and pay them to the board: s 12 (4), applying s 6 (5).

UPDATE

1182 Insurance of benefice buildings

TEXT AND NOTES 2, 4--Repealed in relation to glebe buildings: Endowments and Glebe Measure 1976 Sch 8.

NOTE 2--Requirement for approval by commissioners in relation to selection of insurance office removed: 1972 Measure s 12(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 3).

NOTE 4--The board must consult the registered patron, if any, of the benefice affected before (a) determining on the alterations, if any, with which damage to the parsonage house is to be made good under s 12(3) or (b) determining that the whole or part of the damage is not to be made good: Patronage (Benefices) Measure 1986 s 34(5). However, the board is not prohibited from making its determination without the registered patron's consent: s 34(5). The 1972 Measure s 12(3) proviso is amended so

as to provide that the board may take such action if the incumbent consents and after consulting the registered patron: 1986 Measure Sch 4 para 14. 'Registered patron' has the same meaning as in the 1986 Measure (see PARA 818A.1): 1972 Measure s 31(1); 1986 Measure Sch 4 para 16.

Insurance money must now be paid to the board: 1972 Measure s 19(4) (substituted by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 4 para 8).

TEXT AND NOTE 5--Repealed: 1986 Measure Sch 4 para 16.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1183. Covenants.

1183. Covenants.

Where in pursuance of any Act or Measure land is acquired by an incumbent so that it vests in him in right of his benefice he may enter into a covenant restrictive of the user of, or requiring the doing of any act in relation to, that land or any other land vested in him in right of his benefice¹. Where in pursuance of any Act or Measure land vested in an incumbent in right of his benefice is sold or otherwise disposed of he may enter into a covenant restrictive of the user of, or requiring the doing of any act in relation to, any other land so vested¹. Where in pursuance of any Act or Measure the Church Commissioners acquire land which is to vest in an incumbent in right of his benefice, or where an archbishop or a bishop or the guardian of the spiritualities² acquires, sells or otherwise disposes of land on behalf of an incumbent during a vacancy, the commissioners, the archbishop, the bishop or the guardian of the spiritualities, as the case may be, have the foregoing powers of entering into covenants³.

Unless the conveyance otherwise provides, such a covenant is enforceable against the incumbent for the time being of the benefice in whom the land is vested⁴.

1 Church Property (Miscellaneous Provisions) Measure 1960, s 8 (1).

2 During the vacancy of a see the guardian of the spiritualities exercises and discharges the powers and duties of the bishop under this Measure: s 26. As to this guardian, see PARA 489 ante.

3 Ibid s 8 (2).

4 Ibid s 8 (1), (2). An incumbent entering into a covenant under s 8 (1) is not liable for any breach which occurs after he has ceased to be the incumbent, and the commissioners, the archbishop, the bishop or the guardian of the spiritualities entering into a covenant under s 8 (2) are not liable for any breach which occurs after the land has vested in the incumbent: s 8 (3).

UPDATE

1183 Covenants

NOTE 2--Church Property (Miscellaneous Provisions) Measure 1960 s 26 repealed:
Church of England (Miscellaneous Provisions) Measure 1976 Schedule Pt II.

TEXT AND NOTE 3--A board (ie a parsonages board or the diocesan board of finance: see *infra*) also has the power of entering into covenants: 1960 Measure s 8(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 3(a)). Land may also be acquired by the parsonages board (or the diocesan board of finance if designated as the parsonages board under the Repair of Benefice Buildings Measure 1972 s 1(1) (see 1960 Measure s 7(3), PARA 1111) and the board is entitled to exercise the same powers as the commissioners.

NOTE 4--Now includes a reference to the board (see TEXT AND NOTE 3) entering into a covenant: *ibid* s 8(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1184. Easements.

1184. Easements.

An incumbent or, during a vacancy, the bishop may take an easement for any estate or interest for the benefit of any land which forms part of the benefice property or may grant an easement over any such land¹, provided the consent of the Church Commissioners, the patron, the parsonages board² and (where the power is exercised by the incumbent) the bishop³ is first obtained⁴. The grant or taking of the easement may be either without monetary consideration or for a capital⁵ or periodic sum⁶.

1 Church Property (Miscellaneous Provisions) Measure 1960, s 9 (1).

2 He as successor to the diocesan dilapidations board: see the Repair of Benefice Buildings Measure 1972, s 29, and PARA 520 ante. An instrument signed by the secretary of the board stating that the board's consent has been given is sufficient evidence that it has: Church Property (Miscellaneous Provisions) Measure 1960, s 25 (2).

3 The consent of the bishop must be signified by writing under his hand: *ibid* s 25 (1). During a vacancy of a see the guardian of the spiritualities exercises the bishop's powers: s 26. As to this guardian, see PARA 489 ante.

4 *Ibid* s 9 (1) proviso. The sealing of a deed by the commissioners is conclusive evidence that the requirements of s 9 have been complied with: s 27.

5 A capital sum must be paid to the commissioners to be applied for the purposes for which the proceeds of sale of the land over which the easement is granted would be applicable: *ibid* s 9 (3).

6 *Ibid* s 9 (2).

UPDATE

1184 Easements

TEXT AND NOTES 2-4--Neither the patron's nor the commissioners' consent is required: s 9(1) proviso (amended by the Patronage (Benefices) Measure 1986 s 34(2), Sch 5; and the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 4(a)). As to the parsonages board, or the diocesan board of finance if designated as the parsonages board, see 1960 Measure s 7(3), PARA 1111. As to the application of the 1986 Measure to a Crown benefice, see s 35(9). As to Crown benefices, see s 35(1), PARA 818A.15.

See *Hamble Parish Council v Haggard* [1992] 1 WLR 122 (no consents required because churchyard not property of benefice).

NOTE 2--1960 Measure s 25(2) amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 8.

NOTE 3--Church Property (Miscellaneous Provisions) Measure 1960 s 26 repealed: Church of England (Miscellaneous Provisions) Measure 1976 Schedule Pt II.

NOTE 4--For 'commissioners' read 'board' (see TEXT AND NOTES 2-4): 1960 Measure s 27 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 9).

NOTE 5--The sum must now be paid to the board (see TEXT AND NOTES 2-4): 1960 Measure s 9(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 4(b)).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(4) PROPERTY BELONGING TO BENEFICES/(vi) Miscellaneous Powers and Duties/1185. Power to dedicate land for highways.

1185. Power to dedicate land for highways.

The incumbent may dedicate for the purposes of a highway, either with or without consideration¹, any land belonging to the benefice which forms part of the garden, orchard or appurtenances of the residence house or which is contiguous to it or which forms part of the glebe², provided that the consent of the bishop³, the Church Commissioners, the patron and the parsonages board⁴ is first obtained⁵.

1 Any sum to be paid as consideration must be paid to the Church Commissioners to be applied for the purposes for which the proceeds of the sale of the land would be applicable: Church Property (Miscellaneous Provisions) Measure 1960, s 11 (2).

2 Ibid s 11 (1).

3 See PARA 1184 note 3 ante.

4 See PARA 1184 note 2 ante.

5 Church Property (Miscellaneous Provisions) Measure 1960, s 11 (1) proviso. The sealing of a deed by the commissioners is conclusive evidence that the requirements of s 11 have been complied with: s 27.

UPDATE

1185 Power to dedicate land for highways

TEXT AND NOTE 5--References to the Church Commissioners and the patron omitted: 1960 Measure s 11(1) proviso (amended by the Patronage (Benefices) Measure 1986 s 34(2), Sch 5; and the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 6). In 1960 Measure s 27 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 9) for 'commissioners' read 'board'. As to the parsonages board, or the diocesan board of finance if designated as the parsonages board, see 1960 Measure s 7(3), PARA 1111.

As to the application of the 1986 Measure to a Crown benefice, see s 35(9). As to Crown benefices, see s 35(1), PARA 818A.15.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1186. Sharing agreements.

(5) SHARING OF CHURCH BUILDINGS

1186. Sharing agreements.

Notwithstanding any statutory or other legal provision any two or more churches¹ may make agreements, called 'sharing agreements', for the sharing by them of church buildings² and may carry such agreements into effect³. A sharing agreement may relate to a single church building or two or more church buildings in the same locality, and any existing or proposed church building, and, subject to provisions relating to consecrated churches of the Church of England⁴ and residential buildings⁵, may provide for the shared building or buildings to be owned or continue to be owned by one only of the sharing churches or to be jointly owned by all or some of them⁶.

A sharing agreement must be under seal and must be registered⁷, and the required consents⁸ must be signified in writing⁹ and registered with the deed¹⁰. A sharing agreement is binding on the successors to the parties to it¹¹ and may be amended by subsequent agreement by the same parties with the same consents¹².

No sharing agreement may be made with respect to a cathedral church or peculiar of the Church of England situated in an extra-diocesan or extra-parochial place¹³.

1 The churches to which the Sharing of Church Buildings Act 1969 applies are any church of the Baptist denomination, any church of the Congregational denomination, any congregation of the Association of Churches of Christ in Great Britain and Ireland, the Methodist Church, the United Reformed Church, the Roman Catholic Church, the Church in Wales, the Church of England and any other church giving notice: s 11 (1), Sch. 2; United Reformed Church Act 1972, s 24 (1). Any church represented on the General Council of the British Council of Churches or on the governing body of the Evangelical Alliance or the British Evangelical Council may give notice that the Act should apply to that church: Sharing of Church Buildings Act 1969, s 11 (3).

2 'Church building' means a building used or proposed to be used by a church or churches to which the Act applies (see note 1 supra) as a place of worship, as a church hall or centre available wholly or mainly for activities other than worship, as a youth club or centre or youth hostel, or as a residence or residences for ministers or lay workers, but it does not include any school: *ibid* s 12 (1). A sharing agreement may provide for including any land (other than land used or appropriated for use for burials) or outbuildings held or to be held with a church building, and any easements or rights enjoyed or to be enjoyed with a church building, and references to a 'church building' must in relation to that agreement be construed accordingly: s 12 (1). 'Building' includes part of a building: s 12 (1).

3 *Ibid* s 1 (1). Any practice of a church to which the Act applies of lending church buildings temporarily for particular occasions to other religious bodies is not affected: s 13. A sharing agreement does not effect any exception or exemption for a church building from any provisions of the Charities Act 1960: Sharing of Church Buildings Act 1969, s 8 (1). A sharing agreement with respect to a church building which under the agreement is owned by the Church of England does not affect the application of the Charities Act 1960, s 45 (2) (which excludes from the definition of 'charity' certain corporate property of the Church of England and certain trusts of consecrated property): Sharing of Church Buildings Act 1969, s 8 (2).

4 See *ibid* s 5, and PARA 1191 post.

5 See *ibid* s 7, and PARA 1192 post.

6 *Ibid* s 1 (2). For the purposes of the Act, a church building is deemed to be owned by a church if the building is held by any body or person, whether for a freehold or leasehold estate, for the purposes of that church or on behalf of that church: s 12 (2).

7 le in the case of the Church of England, in the registries of the province and diocese, and, in the case of other churches, in the registry or office of the appropriate authority: *ibid* s 1 (8). As to the appropriate authority, see *PARA 1187* note 4 post.

8 As to the required consents, see *ibid* s 1 (4), and *PARA 1187* post.

9 le by the secretary or clerk of the body concerned or by the person concerned: *ibid* s 1 (8).

10 *Ibid* s 1 (8).

11 *Ibid* s 1 (9). As to the necessary parties, see *PARA 1187* post.

12 *Ibid* s 1 (10).

13 *Ibid* s 10 (1). Chapels and other parts of a cathedral church may be used for inter-denominational worship: see s 10 (2), and *PARA 1190* note 3 post. The provisions of s 10 do not prevent the sharing, otherwise than in pursuance of a sharing agreement, of a church building in an extra-diocesan or extra-parochial place: s 10 (3). As to peculiars, see *PARA 492* ante.

UPDATE

1186 Sharing agreements

TEXT AND NOTES--As to the power of the General Synod to make provision for joint worship and the use of Church of England places of worship by other churches for the conduct of worship see Church of England (Ecumenical Relations) Measure 1988 (see *PARA 1186A*).

NOTE 1--See also United Reformed Church Act 1981 s 14. The 1972 Act is extended with modifications to Jersey: SI 1998/751.

NOTE 3--For 'Charities Act 1960' read 'Charities Act 1993': 1969 Act s 8(1), amended by 1993 Act Sch 6 para 11(3). For 'Charities Act 1960 s 45(2)' read 'Charities Act 1993 s 96(2): 1969 Act s 8(2), amended by 1993 Act Sch 6 para 11(4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1186A. Ecumenical relations.

1186A. Ecumenical relations.

The Church of England (Ecumenical Relations) Measure 1988 enables the General Synod to make provision by canon for co-operation between the Church of England and other designated churches¹. Provision may be made for members of other churches to take part in public worship in accordance with the forms of service and practice of the Church of England², for clerks in Holy Orders, deaconesses, lay workers and readers of the Church of England to take part in worship in accordance with the forms and practice of other churches³, and for places of worship of the Church of England to be made available to other churches for the conduct of worship in accordance with the forms of service and practice of such churches⁴. Further, the General Synod may provide for the bishop of a diocese to enter into agreements for the participation of the Church of England in local ecumenical projects⁵ established in areas of his diocese⁶ and to make special provision as to the ministry in such areas of clerks in Holy Orders, deaconesses, lay workers and readers⁷. Similar agreements may be entered into for participation in such projects in the case of institutions in respect of which a clerk in Holy Orders is licensed⁸ as an extra-parochial minister or the bishop or bishops who make a bishop's mission order⁹. The powers of the General Synod under these provisions must be exercised so as to ensure that no person may preside at Holy Communion according to the rites of the Church of England unless he has been episcopally ordained priest in a church whose orders are recognised by the Church of England and that no person may solemnise a marriage according to the rites of the Church of England unless he is a clerk in Holy Orders of the Church of England¹⁰.

¹ The Church of England (Ecumenical Relations) Measure 1988 applies to any church so designated by the Archbishops of Canterbury and York acting jointly: s 5(1). Only churches which (i) subscribe to the doctrine of the Holy Trinity and administer the Sacraments of baptism and Holy Communion, and (ii) to which the Sharing of Church Buildings Act 1969 applies (see PARA 1186) or, in the case of churches outside the United Kingdom, are nominated by the General Synod by resolution, may be designated: 1988 Measure s 5(2); Church of England (Miscellaneous Provisions) Measure 1992 s 6. As to the churches so far designated under the Measure see Instruments dated 14 March 1989, 17 September 1990, 16 January 1991.

² Ibid s 1(a).

³ Ibid s 1(b).

⁴ Ibid s 1(c).

⁵ ie schemes under which churches of more than one denomination agree, in relation to an area or institution specified in a scheme, to co-operate in accordance with the provisions of the scheme in matters affecting the ministry, congregational life or buildings of the participating churches: 1988 Measure s 6(1).

⁶ Such agreements must be entered into which the appropriate authority of each participating church, such authority being designated as appropriate in relation to that church by the Archbishops of Canterbury and York: ibid s 6(2).

⁷ Ibid s 2(1).

⁸ ie under Extra-Parochial Ministry Measure 1967 s 2.

⁹ ie under the Dioceses, Pastoral and Mission Measure 2007 s 47: 1988 Measure s 2(2) (amended by the 2007 Measure s 63(4)). The powers of the General Synod under the 1988 Measure s 2(1), (2) may only be exercised in respect of local ecumenical projects where every other participating church has been designated as a church to which the 1988 Measure applies under s 5 (see NOTE 1): 1988 Measure s 2(3).

¹⁰ Ibid s 3. As to application of 1988 Measure to any priest or deacon of a United Church who is granted permission to officiate for a limited period in the province of Canterbury or York, see PARA 669.

Any canon made by virtue of the 1988 Measure has effect regardless of any inconsistency with Act of Uniformity 1662 s 15 (see PARA 724); 1988 Measure s 7. Nothing in the 1988 Measure affects the operation of any provision of Marriage Acts 1949 to 1986 as to the place in which any marriage or class of marriages may be solemnised (see PARA 1006); 1988 Measure s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1187. Necessary parties and consents.

1187. Necessary parties and consents.

The parties to a sharing agreement must, as respects the Church of England, be the diocesan board of finance¹ of the diocese and the incumbent² and parochial church council of the parish in which the building or buildings is or are or will be situated³, and, as respects any other church, be such persons as the appropriate authority⁴ of that church may determine⁵. In the case of an existing building, the person in whom it is vested⁶ and any managing trustees and, in the case of a proposed building, any person in whom it is to be vested or who is to be a managing trustee, must be a party to the agreement⁷.

A sharing agreement must not be made on behalf of the Church of England without the consent of the bishop⁸ and the pastoral committee⁹ of the diocese concerned¹⁰. The appropriate authority of any other church may require the consent of any body or person to be given to sharing agreements made on behalf of that church¹¹.

1 'Diocesan board of finance' means the board of that name constituted under the Diocesan Boards of Finance Measure 1925 for that diocese and also a board of finance not so constituted or a body constituted for holding diocesan property on trust if the bishop certifies that it is to be treated as the diocesan board of finance for the diocese: Sharing of Church Buildings Act 1969, s 12 (1).

2 Where a benefice is vacant and a suspension period is current under the Pastoral Measure 1968, s 67 (see PARA 813 ante), the minister in charge must be a party in substitution for the incumbent, but otherwise a sharing agreement must not be made on behalf of the Church of England during a vacancy in the benefice concerned: s 1 (6).

3 Ibid s 1 (3) (a).

4 The 'appropriate authority' for each of the following churches is the authority named after it, namely for Baptist churches, the Baptist Trust Corporation as defined in ibid Sch. 2 as respects s 1 (3), (4), but not s 1 (8), acting with the concurrence of the church meeting); for Congregational churches, the Congregational Trust Corporation as so defined (as respects s 1 (3), (4), but not s 1 (8), acting with the concurrence of the church meeting); for any congregation of the Association of Churches of Christ in Great Britain and Ireland, the association's Annual Conference (as respects s 1 (3), (4), but not s 1 (8), acting with the concurrence of the duly constituted church meeting); for the Methodist Church, its Annual Conference; for the United Reformed Church, the Synod of the Church's province in which the church building or buildings is or are to be situated; for the Roman Catholic Church, the bishop of the diocese in which the church building or buildings is or are or will be situated; and for the Church in Wales, the Governing Body: s 11 (2), Sch. 2; United Reformed Church Act 1972, s 24 (1).

5 Sharing of Church Buildings Act 1969, s 1 (3) (b).

6 If the Church Commissioners certify that the ownership of a consecrated church of the Church of England cannot be ascertained with certainty, and that the church ought to be treated as vested in the incumbent of the parish in which it is situated, the church must be deemed to be so vested for the purposes of the Sharing of Church Buildings Act 1969: s 12 (3). 'Consecrated' means consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England: s 12 (1).

7 Ibid s 1 (3).

8 Where a see is vacant, or the bishop is unable because of illness or absence to give his consent, the archbishop of the province may appoint a suffragan or assistant bishop or an archdeacon of the diocese to act in place of the bishop for the purpose of giving consent; and in the event of a vacancy in the see of an archbishop or his illness or absence, an appointment may be made by the other archbishop: ibid s 1 (7).

9 As to the pastoral committee, see PARA 521 ante.

10 Ibid s 1 (4). Where a church building is held on trust for educational purposes which include instruction in religious knowledge according to the faith and practice of the Church of England, the consent of the diocesan education committee is required in lieu of the consent of the pastoral committee, and the agreement is subject to the approval of the Secretary of State: s 1 (5). 'Diocesan education committee' means the committee constituted under the Diocesan Education Committees Measure 1955, Schedule, or in accordance with an order made under that Measure (see PARA 522 ante): Sharing of Church Buildings Act 1969, s 12 (1).

11 Ibid s 1 (3).

UPDATE

1187 Necessary parties and consents

NOTE 3--Where a team ministry is established for the benefice comprising that parish, the parties also include (1) any vicar in the team ministry to whom a special cure of souls in respect of the parish has been assigned by a scheme under the Pastoral Measure 1983 or by his licence from the bishop (see PARA 690), or (2) any member of the team to whom a special responsibility for pastoral care in respect of the parish has been assigned under the 1983 Measure s 20(8A) (see PARA 870), the parish not being one in respect of which a special cure of souls has been assigned as mention in head (1) above: 1969 Act s 1(3)(a), amended by the Team and Group Ministries Measure 1995 s 12.

NOTE 4--See also United Reformed Church Act 1981 s 14. The 1972 Act is extended with modifications to Jersey: SI 1998/751.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1188. Trusts of shared buildings.

1188. Trusts of shared buildings.

Where a sharing agreement¹ is made with respect to an existing or proposed church building² which is to be owned or continue to be owned by one only of the sharing churches the trusts or purposes on or for which the building is held or to be held must include the purposes and provisions of the agreement, as for the time being in force, and any instrument declaring those trusts and purposes has effect, or, in the case of a proposed building, must provide, accordingly³. Where an agreement relates to an existing or proposed church building which is to be owned jointly by all or some of the sharing churches, the building⁴ must be vested in trustees representing those churches, or in a custodian trustee⁵ with managing trustees representing those churches, to be held on trust to be used for the purposes of the sharing agreement and in accordance with its terms and, subject to that, for such other charitable purposes of the sharing churches as may be appropriate, and the trust instrument relating to the building must provide accordingly⁶. The purposes of a sharing agreement must be limited to those which are exclusively charitable⁷.

1 For the meaning of 'sharing agreement', see PARA 1186 ante.

2 For the meaning of 'church building', see PARA 1186 note 2 ante.

3 Sharing of Church Buildings Act 1969, s 2 (1).

4 In the case of a leasehold building the vesting is of the leasehold estate: *ibid* s 12 (2).

5 'Custodian trustee' includes the official custodian for charities, subject to the making of such an order as is required by the Charities Act 1960: Sharing of Church Buildings Act 1969, s 2 (4).

6 *Ibid* s 2 (2). The body or person in whom an existing church building is vested may convey the building to the managing trustees or custodian trustees, for such consideration, if any, as may be provided in the sharing agreement or determined under it: s 2 (3). The Charities Act 1960, s 29 (which requires dealings with charity property to be authorised by an order of the court or the Charity Commissioners), does not apply to the conveyance, vesting or disposal of church buildings under the Sharing of Church Buildings Act 1969, s 2: s 8 (3).

7 *Ibid* s 2 (5).

UPDATE

1188 Trusts of shared buildings

NOTE 5--For 'Charities Act 1960' read 'Charities Act 1993': 1969 Act s 2(4), amended by Charities Act 1993 Sch 6 para 11(2). See also CHARITIES vol 8 (2010) PARA 298.

NOTE 6--Charities Act 1960 s 29 repealed: Charities Act 1992 s 78(2), Sch 7. For provision as to restrictions on dispositions of charity land, see now Charities Act 1993 s 36. Sharing of Church Buildings Act 1969 s 8(3) amended: Charities Act 1992 s 78(1), Sch 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1189. Finance and management.

1189. Finance and management.

A sharing agreement¹ must make provision with respect to the financial and other obligations of the parties to it in respect of the provision, improvement and management² of the church building³ or building shared or to be shared under the agreement⁴. The powers of any body or person under any statutory or other legal provision⁵ to apply money, whether by grant or loan, in respect of the provision, improvement or management of church buildings of a church to which the Sharing of Church Buildings Act 1969 applies⁶ are applicable in respect of any church building shared or to be shared by that church under a sharing agreement⁷.

The powers of any body or person under a statutory or other legal provision (1) to acquire, hold, improve or manage church buildings of a church, or any property to be used for or in connection with the provision of such church buildings, or (2) to grant property for or in connection with the provision of such church buildings, whether for a full consideration or for less than a full consideration, are applicable in respect of any church building to which a sharing agreement relates and which, under the agreement, is or is to be owned by that church or jointly owned by that church and any other church or churches⁸.

The responsibility for the management of a church building owned by one only of the sharing churches under a sharing agreement and of its contents remains with the authorities of or trustees representing that church⁹. Where a sharing agreement provides for joint ownership of the shared building the trustees are responsible for the management of the building in place of any responsibility of the authorities of the sharing churches¹⁰.

1 For the meaning of 'sharing agreement', see PARA 1186 ante.

2 'Management' in relation to a church building includes repair and furnishing: Sharing of Church Buildings Act 1969, s 3 (6).

3 For the meaning of 'church building', see PARA 1186 note 2 ante.

4 Sharing of Church Buildings Act 1969, s 3 (1).

5 'Statutory or other legal provision' means any Act or Measure, any instrument or document made or having effect under or by virtue of any Act or Measure, any other instrument or document affecting legal rights or obligations, any trust (whether under a trust instrument or otherwise), and any rule of law, being in force on 25th July 1969; but does not include a lease or tenancy of a church building or any mortgage, charge, covenant or rights affecting a church building and operating for the benefit of persons other than a church to which the Sharing of Church Buildings Act 1969 applies or any general Act regulating or affecting the use of land: s 12 (1).

6 For the churches to which the Act applies, see PARA 1186 note 1 ante.

7 Sharing of Church Buildings Act 1969, s 3 (1).

8 Ibid s 3 (2). Any such power to hold church buildings includes a power to be a trustee (representing that church) of such a jointly-owned church building or, in the case of a corporation aggregate, to be the custodian trustee: s 3 (2). The New Housing Areas (Church Buildings) Measure 1954 and the New Parishes Measure 1943, ss 13, 14, relating to the provision and improvement of church buildings are extended to apply to shared buildings: see the Sharing of Church Buildings Act 1969, s 3 (3); Sharing of Church Buildings Measure 1970, s 2, and see PARAS 1061, 1062, 1064 ante.

9 Sharing of Church Buildings Act 1969, s 3 (4). This responsibility must be discharged in accordance with the provisions of the agreement and any arrangements made under it, including provisions or arrangements for consultation and for payment of contributions towards management expenses: s 3 (4).

10 Ibid s 3 (5). The trustees must discharge that responsibility in accordance with the provisions of the sharing agreement and any arrangements made under it, including provisions or arrangements for consultation with any sharing church which is not a joint owner and for payment of contributions towards management expenses: s 3 (5) proviso (a). The agreement may provide that any movables required for the worship of any sharing church are the responsibility of the authorities of that church: s 3 (5) proviso (b).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1190. Sharing of buildings for purposes of worship.

1190. Sharing of buildings for purposes of worship.

In the case of a building¹ used as a place of worship, a sharing agreement² must provide for determining the extent to which it is to be available for worship in accordance with the forms of service and practice of the sharing churches, and may provide for the holding of such joint services on such occasions as may be approved by those churches³. A minister, reader or lay preacher of one of the churches sharing a church building⁴ under a sharing agreement may, by invitation of a minister, reader or lay preacher of another such church, take part in conducting worship in that building in accordance with the forms of service and practice of that other church⁵.

Subject to the above provisions the participation of the communities of the sharing churches in each other's worship must be governed by the practices and disciplines of those churches in like manner as if they worshipped in separate buildings⁶.

1 For the meaning of 'building', see PARA 1186 note 2 ante.

2 For the meaning of 'sharing agreement', see PARA 1186 ante.

3 Sharing of Church Buildings Act 1969, s 4 (1). An agreement may also dispense, to such an extent as may be necessary, with the requirement to hold certain services of the Church of England on Sundays and other days: s 4 (1). As to these requirements, see PARA 943 ante. The dean and provost or chapter of a cathedral church may authorise a chapel or other part of the cathedral church to be used for the purposes of public worship in accordance with the forms of service and practice of two or more churches to which the Act applies (as to which see PARA 1186 note 1 ante) (s. 10 (2)), although no sharing agreement may be made (s. 10 (1)).

4 For the meaning of 'church building', see PARA 1186 note 2 ante.

5 Sharing of Church Building Act 1969, s 4 (2). Such rights must be exercised in accordance with any rules or directions given by either church and to any limitation imposed by or under the sharing agreement: s 4 (2).

6 Ibid s 4 (3).

UPDATE

1190 Sharing of buildings for purposes of worship

TEXT AND NOTES--As to joint worship, the use of Church of England places of worship by other churches for the conduct of worship and the participation of the Church of England in local ecumenical projects; see further the Church of England (Ecumenical Relations) Measure 1988 (see PARA 1186A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1191. Consecrated churches of the Church of England.

1191. Consecrated churches of the Church of England.

With respect to an existing consecrated¹ church of the Church of England, a sharing agreement² must not be made unless the church under the agreement remains in the sole ownership of the Church of England³, or authority to make the scheme on behalf of the Church of England is given by a pastoral scheme⁴ and the church is under the agreement to be in the joint ownership of the Church of England and another church or churches⁵.

Where a sharing agreement is made on behalf of the Church of England with respect to a church building⁶ used or to be used as a place of worship, but not an existing consecrated church, the building must not be consecrated unless under the agreement it is to be in the sole ownership of the Church of England⁷.

Where a church building, being a place of worship, is shared by the Church of England under a sharing agreement, then (1) if the agreement provides for the sole ownership of the building by the Church of England, but not otherwise, the building may become or remain a parish church⁸; and (2) in any case the agreement does not prevent or affect the designation of the building⁹ as a parish centre of worship¹⁰.

A church building to which a sharing agreement relates, including one owned by the Church of England, may be certified¹¹ as a place of religious worship of any church sharing the building other than the Church of England¹².

1 For the meaning of 'consecrated', see PARA 1187 note 6 ante.

2 For the meaning of 'sharing agreement', see PARA 1186 ante.

3 Sharing of Church Buildings Act 1969, s 5 (1) (a).

4 Ie a pastoral scheme made under the Pastoral Measure 1968, s 2 (1), Part II (ss. 16-41), as extended by the Sharing of Church Buildings Measure 1970, s 1. The duties of a pastoral committee to review arrangements for pastoral supervision include a duty to consider any proposals for such sharing agreements and, in cases where it considers it desirable, to make recommendations to the bishop for authorising the making of such agreements on behalf of the Church of England: s 1 (1) (a). A pastoral scheme authorising the making of any such agreement must specify the church or parsonage house to which it relates, and may specify terms and conditions subject to which the authorisation is given: s 1 (2). As to pastoral schemes, see PARA 856 et seq ante.

5 Sharing of Church Buildings Act 1969, s 5 (1) (b). Where an agreement relates to a consecrated church the faculty jurisdiction does not apply in respect of moveable required for the worship of any sharing church other than the Church of England: s 5 (3). As to the faculty jurisdiction, see PARA 1306 et seq post.

6 For the meaning of 'church building', see PARA 1186 note 2 ante.

7 Sharing of Church Buildings Act 1969, s 5 (2).

8 Ibid s 5 (4) (a).

9 Ie under the Pastoral Measure 1968, s 29: see PARA 539 ante.

10 Sharing of Church Buildings Act 1969, s 5 (4) (b).

11 Ie under the Places of Worship Registration Act 1855.

12 Sharing of Church Buildings Act 1969, s 6 (1). The provisions of the Marriage Act 1949, ss 41-44, as to the registration of buildings apply: see the Sharing of Church Buildings Act 1969, s 6 (1) PARA 330 ante, 1412 post.

UPDATE

1191 Consecrated churches of the Church of England

TEXT AND NOTES--As to joint worship, the use of Church of England places of worship by other churches for the conduct of worship and the participation of the Church of England in local ecumenical projects; see further the Church of England (Ecumenical Relations) Measure 1988 (see PARA 1186A).

NOTE 4--1968 Measure and 1970 Measure s 1 consolidated in Pastoral Measure 1983; see s 2(1) (repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

NOTE 9--Now 1983 Measure s 29.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1192. Sharing of residential buildings.

1192. Sharing of residential buildings.

Where a sharing agreement¹ is made with respect to a church building² or buildings proposed to be used under the agreement as a residence or residences for ministers or lay workers, the purpose of the agreement must be to provide residential accommodation, whether in the form of separate residences or otherwise, available for occupation by the ministers or lay workers of the sharing churches³. Where under any such agreement a separate residence is let to an incumbent of the Church of England in his corporate capacity, it must be the residence house of the benefice during the term of the lease⁴.

A sharing agreement must not be made with respect to an existing residence house⁵ of a benefice of the Church of England, unless authority to make the agreement is given under a pastoral scheme⁶.

1 For the meaning of 'sharing agreement', see PARA 1186 ante.

2 For the meaning of 'church building', see PARA 1186 note 2 ante.

3 Sharing of Church Buildings Act 1969, s 7 (1).

4 Ibid s 7 (2).

5 No right of pre-emption, or provision for the property to revert to previous ownership, is exercisable or may operate on the conveyance, vesting or disposal of such an existing residence house under ibid s 2 (see PARA 1188 ante) or s 9 (1)-(3) (see PARA 1193 post): s 7 (4).

6 Ibid s 7 (3). The making of sharing agreements on behalf of the Church of England in respect of parsonage houses which under the agreement will be in the joint ownership of that Church and any other church must be authorised by a pastoral scheme under the Pastoral Measure 1968, s 2 (1), Part II (ss. 16-41), as extended by the Sharing of Church Buildings Measure 1970, s 1: see s 1. Such a scheme must specify terms and conditions subject to which authorisation is given: s 1 (2). As to pastoral schemes, see PARA 856 et seq ante.

UPDATE

1192 Sharing of residential buildings

NOTE 6--1968 Measure and 1970 Measure s 1 consolidated in Pastoral Measure 1983; see s 2(1) (repealed by the Dioceses, Pastoral and Mission Measure 2007 Sch 7).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(5) SHARING OF CHURCH BUILDINGS/1193. Termination of sharing.

1193. Termination of sharing.

A sharing agreement¹ must contain provisions for terminating the sharing of the church building or buildings². Such provisions may (1) if the agreement relates to two or more buildings, provide for terminating the sharing of any building before the others³; and (2) if there are two or more sharing churches, provide for the withdrawal of any church from the sharing of any church building, not being a church which is the sole owner or previous owner of the building⁴. The sharing agreement may provide for financial adjustments as between the churches, on such termination or withdrawal, by payments out of money held for the purposes of the agreement or of any shared building or by other payments by one church to another⁵.

On the termination of the sharing of a church building owned by one only of the sharing churches the building must be held on the trusts or for the purposes on or for which it was held before the sharing agreement or would be held but for the agreement⁶. On the termination of the sharing of a church building jointly owned by all or some of the sharing churches, being a building which before the agreement was owned by one only of those churches, it vests (i) if it was previously a consecrated church of the Church of England or a building vested in the incumbent of a Church of England parish, in the incumbent of the parish where the building is situated, for the same purposes as before, as nearly as may be⁷; and (ii) in any other case, in such of the trustees in whom the building is vested as represent the church which previously owned the building, and must be held and managed on the trusts or for the same purposes as before⁸. Otherwise the agreement may provide for the disposal of the building and for the application of the proceeds to charitable purposes of the sharing churches⁹.

1 For the meaning of 'sharing agreement', see PARA 1186 ante.

2 Sharing of Church Buildings Act 1969, s 9 (1). For the meaning of 'church building', see PARA 1186 note 2 ante.

3 Ibid s 9 (1) (a).

4 Ibid s 9 (1) (b).

5 Ibid s 9 (1).

6 Ibid s 9 (2).

7 Ibid s 9 (3) (a).

8 Ibid s 9 (3) (b). The Charities Act 1960, s 29 (which requires dealings with charity property to be authorised by order of the court or the Charity Commissioners) does not apply to a conveyance, vesting or disposal under the Sharing of Church Buildings Act 1969, s 9: s 8 (3).

9 Ibid s 9 (4).

UPDATE

1193 Termination of sharing

NOTE 8--Charities Act 1960 s 29 repealed: Charities Act 1992 s 78(2), Sch 7. For provision as to restrictions on dispositions of charity land, see now Charities Act 1993 s

36. Sharing of Church Buildings Act 1969 s 8(3) amended: Charities Act 1992 s 78(1), Sch 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1194. Fees for the offices of the church.

(6) FEES AND OFFERINGS

(i) Parochial or Surplice Fees

1194. Fees for the offices of the church.

Fees have from very early times been recognised by custom as due for the performance of the services of the church¹. In particular fees, now called surplice fees, are recognised as due on the performance of those offices of the church which are for the benefit of individual members of the church², namely marriages, churchings and burials. On marriage the bridegroom is directed by rubric, when laying the ring upon the book, to lay with it the accustomed duty to the priest and clerk³, and on being churched the woman who comes to give her thanks is directed by the rubric to offer accustomed offerings⁴. It is a law of the church that no sacrament should be denied on account of non-payment of money, and neither must matrimony be hindered, nor must burial be denied⁵, on account of the non-payment of the fee, but a moderate fee may be shown to be due by custom on marriage⁶ or on burial⁷, and where so shown to be due is recoverable⁸.

As appears subsequently⁹, fees may be payable in accordance with tables established and fixed under powers conferred by Measure, and in fact fees payable for or in respect of the solemnisation or performance of the offices of the church have in most cases been settled or fixed under powers so conferred¹⁰.

1 Cf. Thorpe, *Ancient Laws and Institutes* 73, 83, 131, 136.

2 No fee is payable in respect of baptism: see PARA 997 ante. As to baptismal certificates, however, see PARA 1198 note 5 post.

3 Book of Common Prayer, Form of Solemnisation of Matrimony, rubric preceding the giving of troth.

4 Book of Common Prayer, rubric at the end of the Thanksgiving of Women after Child-birth, commonly called the Churching of Women: see PARA 1045 ante.

5 Lyndwood 278; 1 Burn's *Ecclesiastical Law* (4th Edn) 268; 2 Burn's *Ecclesiastical Law* (4th Edn) 480.

6 As to fees on marriage, see PARA 1195 post.

7 As to fees for burial, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1096 et seq.

8 *Bryant v Foot* (1868) LR 3 QB 497, Ex Ch; *Gilbert v Buzzard* (1821) 2 Hag Con 333. As to the validity of the custom, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1101.

9 See PARA 1198 post.

10 The fees payable to ministers of religion for burial of non-parishioners and services performed elsewhere than in parish churchyards are the subject of special statutory provisions: see CREMATION AND BURIAL vol 10 (Reissue) PARAS 974, 1106-1107.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1195. Customary fees relating to marriage.

1195. Customary fees relating to marriage.

In the absence of a table of settled or fixed fees¹ the minister can only demand for publishing banns, giving certificates of the publication of banns and solemnising marriage such fees, if any, as have been taken by immemorial custom in the parish². Fees have been fixed for these matters under powers conferred by Measure³.

¹ See PARA 1194 ante.

² Watson, *Clergyman's Law* (4th Edn) 585; *Bishop of St David's v Lucy* (1699) 1 Ld Raym 447 at 450, per Holt CJ; *Patten v Castleman* (1753) 1 Lee 387 at 393, per Sir George Lee. A fee cannot be demanded for the marriage of a parishioner which is solemnised in another parish: *Patten v Castleman* supra. A customary marriage fee must be of such a moderate amount that, having regard to the then value of money, it could conceivably have been taken as of right in the reign of Richard I; otherwise it is bad: *Bryant v Foot* (1868) LR 3 QB 497, Ex Ch. It must be a fixed sum and cannot be of varying amount: *Bryant v Foot* supra at 509.

³ See PARA 1198 note 5 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1196. Customary fees for monuments.

1196. Customary fees for monuments.

A fee may be due by custom to the rector or vicar for allowing the erection of a monument in the church, and a charge may also be made by the parson, as owner of the freehold of the churchyard, for permitting the erection of a monument over a grave there¹. The payment demanded must not include any sum in respect of the ground occupied by the grave of a parishioner or person dying in the parish, nor of the performance of the office, but may take account of the particular place in the churchyard in which the burial is permitted or the longer occupation of the ground by reason of the nature of the monument or of the mode of burial². Fees for the erection of monuments in churchyards have been prescribed under powers conferred by Measure³.

1 See CREMATION AND BURIAL vol 10 (Reissue) PARA 1102.

2 *Gilbert v Buzzard* (1821) 2 Hag Con 333. As to the quantum of such a fee, see *Gilbert v Buzzard* supra at 363 et seq.

3 See PARA 1198 note 5 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1197. Fees fixed under former enactments.

1197. Fees fixed under former enactments.

Fees were formerly fixed under enactments, now largely repealed, relating to the formation of new parishes and districts¹.

In 1938 the Ecclesiastical Commissioners were given powers to establish and fix for any parish a table of fees to be payable for or in respect of the solemnisation or performance of church offices, the erection of monuments in churchyards and other such services or matters as might by any law or custom be included in such tables, and to revoke tables of fees and to establish and fix new tables in substitution for them². These powers, subsequently exercisable by the Church Commissioners³, have now been revoked⁴ and replaced by new powers of establishing fees⁵.

1 See the Church Building Acts 1818 to 1884; New Parishes Acts 1843 to 1884 (now largely repealed with certain savings, by the New Parishes Measure 1943, s 32, Schedule (repealed)). See also the New Parishes Measure 1943, ss 1-12 (now repealed by the Pastoral Measure 1968, s 95, Sch. 9).

2 Ecclesiastical Commissioners (Powers) Measure 1938, s 1 (repealed). All powers vested in any authority or persons other than the Ecclesiastical Commissioners on 23rd June 1938 (the commencement of the Measure) to fix, alter or add to any table of fees for any parish whether under or by virtue of any custom or usage or by virtue of the provisions of any statute, including the powers conferred by the Parish of Manchester Division Act 1850, s 33, and by the New Parishes Act 1843, s 15, were determined and declared no longer exercisable: Ecclesiastical Commissioners (Powers) Measure 1938, s 1 (2) (repealed).

3 See the Church Commissioners Measure 1947, s 2.

4 See the Ecclesiastical Fees Measure 1962, s 8 (2), Schedule, Part II.

5 See *ibid* s 2, and PARA 1198 post.

UPDATE

1197 Fees fixed under former enactments

NOTE 4--1962 Measure replaced by Ecclesiastical Fees Measure 1986: see PARAS 1198, 1204.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1198. Fees established by the Church Commissioners.

1198. Fees established by the Church Commissioners.

On 3rd July 1962¹ the Church Commissioners came under a duty to frame an order establishing a table of parochial fees² which, with certain exceptions³, should apply in all parishes in the provinces of Canterbury and York⁴. The commissioners may frame further orders in substitution for, or revoke, alter or add to, earlier orders⁵. An order may contain incidental provisions, may provide for the payment of special or increased fees for special services and may provide that the amount of any fee may be determined in each case by the chancellor of the diocese⁶. An order framed by the commissioners does not come into operation unless it has been approved by the General Synod⁷, and it is subject to annulment by a resolution of either House of Parliament⁸.

During a vacancy in a benefice fees which would be paid to the incumbent must be paid to the sequestrators⁹.

Any parochial fee is recoverable as a debt due by proceedings in the county court¹⁰.

1 le the date on which the Ecclesiastical Fees Measure 1962 was passed.

2 'Parochial fees' means any fees payable to a clerk in holy orders, parish clerk, sexton or other person performing duties in connection with a parish or to a parochial church council for or in respect of the solemnisation or performance of church offices, the erection of monuments in churchyards, such other services or matters as might by law or custom on 3rd July 1962 be included in a table of parochial fees, and such other services or matters of a like nature for which in the commissioners' opinion the payment of fees is appropriate: *ibid* s 2 (2). 'Parish' means any ecclesiastical parish or district, parochial chapelry or other place the incumbent or minister whereof either is entitled to retain for his own benefit or is under a duty to pay over to another clerk in holy orders the fees chargeable in respect of the performance of church offices: s 7.

3 No order is binding upon a clerk in holy orders, parish clerk, sexton or any other person performing duties in connection with a parish who on 3rd July 1962 held office or performed duties in connection with a parish for which a table of fees had not been established in accordance with the provisions of the Ecclesiastical Commissioners (Powers) Measure 1938, s 1 (repealed) (see PARA 1197 ante), without that person's written consent so long as he holds such office or performs such duties, but such consent when given is irrevocable: Ecclesiastical Fees Measure 1962, s 2 (4).

4 *Ibid* s 2 (1). The Measure does not extend to the Channel Islands or the Isle of Man, but may be applied to the Channel Islands in accordance with the provisions of the Channel Islands (Church Legislation) Measures 1931 and 1957 (see PARA 402 ante): Ecclesiastical Fees Measure 1962, s 9. The first order made under s 2 (1) was the Parochial Fees Order 1962, S.I. 1962 No. 2466, which has been revoked and replaced by the Parochial Fees Order 1972, S.I. 1972 No. 177.

5 Ecclesiastical Fees Measure 1962, s 2 (1). The Parochial Fees Order 1972, art. 1, Schedule, prescribes the following fees:

Baptism fees payable to the incumbent: certificate, 50p; short certificate, 25p; searching the register, 30p for the first year and 15p for each year thereafter.

Marriage fees payable to the incumbent: publication of banns, 75p (and 30p to the clerk); certificate of banns, 50p (and 20p to the clerk); marriage service (the fees being doubled if the organ is used), £2 (and £1 each to the clerk and parochial church council); searching the register for a period before 1837, 30p for the first year and 15p for each year thereafter.

Burial fees payable to the incumbent: service in church before burial or cremation where the organ is not used, £2 (and £1 each to the clerk, sexton and parochial church council); the same where the organ is used: £4 (and £2 each to the clerk and council and £1 to the sexton); burial in grave or vault or burial or deposit of cremated remains in churchyard not following service in a church of the same parish, £2 (and £1 each to the clerk and sexton and £2 to the council); burial certificate, 50p; searching the register, 30p for the first year and 15p for

each year thereafter. Other burial fees payable are £1 to the sexton for tolling the bell or for the burial of a still-born infant, and £2 to the council for burial in grave or vault or burial or deposit of cremated remains in churchyard following service in a church of the same parish.

Fees for monuments in churchyards, including the original inscription, payable to the incumbent: small wooden cross, 50p (and 20p to the sexton); vase not exceeding 12 inches in height, £1 (and 25p to the sexton); other monuments, £6 (and £1 to the sexton; where a faculty is granted the parochial church council is entitled to a fee fixed by the chancellor, and where the monument is erected with the incumbent's consent given under the chancellor's general directions the council's fee is £4); additional inscriptions, £2.

Miscellaneous fees to the incumbent: inspection of instrument of apportionment or agreement for exchange of land for tithes deposited under the Tithe Act 1836, 25p; furnishing copies of the above, 20p for every seventy-two words.

The incumbent may direct that fees otherwise payable to him be payable to the minister performing the service or duty; where there is no clerk or sexton their fees are payable to the church servant performing the duty, and where no church servant is so employed those fees are payable to the incumbent: Parochial Fees Order 1972, Schedule.

No table of fees established under the Ecclesiastical Fees Measure 1962 extends to any matter in respect of which a table of fees may be made under the Cremation Act 1902, s 12 (see CREMATION AND BURIAL vol 10 (Reissue) PARA 974), or the Local Authorities' Cemeteries Order 1974, S.I. 1974 No. 628, art. 12: Ecclesiastical Fees Measure 1962, s 2 (8) (which refers to the Burial Act 1900, s 3, repealed by the Local Government Act 1972, Sch. 30, and replaced by Sch. 26 paras 12, 13, in turn repealed by the Local Authorities' Cemeteries Order 1974, art. 17, Sch. 3, and replaced by art. 12, which must now be read into the Measure of 1962 by virtue of the Local Government Act 1972, s 272 (2)). Fees prescribed by the commissioners under the Ecclesiastical Fees Measure 1962, s 2 (1), have precedence over fees fixed by a bishop's licence under the Marriage Act 1949, s 20 (see PARA 1200 post): Ecclesiastical Fees Measure 1962, s 2 (5).

6 Ibid s 2 (3).

7 Ibid s 3 (1); Synodical Government Measure 1969, s 2 (2).

8 Ecclesiastical Fees Measure 1962, s 3 (2).

9 Ibid s 2 (6).

10 Ibid s 2 (7).

UPDATE

1198 Fees established by the Church Commissioners

TEXT AND NOTES--1962 Measure replaced by Ecclesiastical Fees Measure 1986. The Archbishops' Council may prepare a draft of an order, known as a Parochial Fees Order, which prescribes the amount of the parochial fees to be paid to the persons specified in that order in relation to specified matters; such an order may contain such incidental provisions as the Council considers necessary or desirable: s 1 (amended by SI 1998/1715). As to the Archbishops' Council see PARA 427A et seq. 'Parochial fees' mean any fees payable to a parochial church council, to a clerk in Holy Orders, or to any other person performing duties in connection with a parish for, or in respect of, the solemnisation or performance of church offices or the erection of monuments in churchyards or such other services or matters as may by law or custom be included in a Parochial Fees Order and such other services or matters for which, in the opinion of the Commissioners, the payment of fees is appropriate, except fees or other charges payable under Local Government Act 1972 s 214, Sch 26 (burial fees) or Cremation Act 1902 s 62 (cremation service fees): 1986 Measure s 10. Every draft order must be laid before the General Synod and if it is approved by it, whether with or without amendment, the draft order as so approved must be referred to the Council: s 2(1) (amended by SI 1998/1715). Where a draft order is referred under the foregoing provision: (a) if it has been approved by the General Synod without amendment, the Council may, by applying its seal, make the order; (b) if it has been approved with amendment the Council may either (i) by applying its seal make the order as so

amended or (ii) withdraw the draft order for further consideration in view of any amendment made by the General Synod. An order does not come into force until it has been sealed by the Council: 1986 Measure s 2(2) (amended by SI 1998/1715).

Where the Business Committee of the General Synod (see PARA 383B) determines that an order does not need to be debated by the General Synod, then, unless (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the draft order to be debated or (b) notice is so given by any such member that he wishes to move an amendment to the draft order, the draft order may for the purposes of the 1986 Measure s 2(1), (2) be deemed to have been approved by the General Synod without amendment: s 2(3) (amended by Church of England (Miscellaneous Provisions) Measure 1995 s 14; and SI 1998/1715. The Statutory Instruments Act 1946 applies to an order sealed by the Commissioners under the 1986 Measure s 2(2) as if it were a statutory instrument and were made when sealed by the Commissioners and as if the 1986 Measure were an Act providing that any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 2(4) (amended by SI 1998/1715).

During a vacancy in a benefice parochial fees which, but for the vacancy, would be paid to the incumbent of the benefice must be paid to the diocesan board of finance or to such other person as the said board, after consultation with the bishop, may direct: 1986 Measure s 3(1).

Any fee payable by virtue of an order made under this Measure is recoverable as a debt: s 7.

By virtue of Sch 2, orders for fees made under the 1962 Measure are to continue in force as if they were made under the 1986 Measure.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 4, 5--SI 1972/177 now replaced by Parochial Fees Order 2009, SI 2009/2106. The fees are as follows:

TABLE OF PAROCHIAL FEES

	<i>Col 1 Fee payable to Incumbent</i>	<i>Col 2 Fee payable to Parochial Church Council</i>	<i>Col 3 Total Fees Payable</i>
	£	£	£
BAPTISMS			
Certificate issued at time of baptism	12	--	12
Short certificate of baptism given under Baptismal Registers Measure 1961 s 2	9	--	9
MARRIAGES			
Publication of banns of marriage	15	7	22
Certificate of banns issued at time of publication	12	--	12
Marriage service	126	134	260
FUNERALS AND BURIALS			
A. Service in church			
Funeral service in church	54	45	99
Burial in churchyard following on from service in church	--	194	194
Burial in cemetery or cremation	--	--	NIL

following on from service in church			
Burial of body in churchyard on separate occasion	36	194	230
Burial of cremated remains in churchyard on separate occasion	36	78	114
Burial in cemetery on separate occasion	36	--	36
B. No Service in church			
Service in crematorium or cemetery	99	--	99
Burial of body in churchyard	36	194	230
Burial of cremated remains in churchyard	36	78	114
C. Certificate issued at time of burial	12	--	12
MONUMENTS IN CHURCHYARDS			
Permitted in accordance with rules, regulations or directions made by the Chancellor including those relating to a particular churchyard or part of a churchyard (but excluding a monument authorised by a particular faculty)--			
Small cross of wood (*)	9	12	21
Small vase not exceeding 305mm x 203mm x 203mm (approx 12" x 8" x 8") (*)	36	45	81
Tablet, plaque or other marker commemorating a person whose remains have been cremated (*)	36	45	81
Any other monument (*)	54	103	157
Additional inscription on existing monument	36	--	36
SEARCHES IN CHURCH REGISTERS, ETC			
Searching registers of marriages for period before 1 July 1837			
(For up to one hour)	12	7	19
(For each subsequent hour or part of an hour)	9	7	16
Searching registers of baptisms or burials (including provision of one copy of any entry therein)			
(For up to one hour)	12	7	19
(For each subsequent hour or part of an hour)	9	7	16
Each additional copy of an entry in a register of baptisms or burials	12	7	19
Inspection of instrument of apportionment or agreement for exchange of land for tithes deposited under Tithe Act 1836(a)	9	--	9
Furnishing copies of above (for every 72 words)	9	--	9

* See PARA 5.

1 Burial on a separate occasion

In relation to the fee for a burial in a churchyard, 'on a separate occasion' means on any occasion other than following on from a service in church, for example the interment of cremated remains.

2 Burial of infant

No fee is payable in respect of the burial of a still-born infant, or for the funeral or burial of an infant dying within the period of one year after birth.

3 Funeral service

If a full funeral service is held at the graveside, the incumbent's fee is increased to that payable where the service is held in church.

4 Burial of cremated remains in churches or closed churchyards

Where cremated remains are buried in or under a church or in a closed churchyard, the fees payable to the incumbent and the parochial church council are (a) where burial is authorised by a general faculty, the same as those laid down in the above table for burial in a churchyard; (b) where burial is authorised by a particular faculty, such sums as may be determined by the chancellor, who must specify the person or persons entitled to receive them.

5 Monuments in churchyards

The fees marked (*) include fees for the original inscription. Where a monument in a churchyard is erected, or an additional inscription on a monument is made under the authority of a particular faculty, the fees payable to the incumbent and the parochial church council or either of them are such sums as may be determined by the chancellor, who must specify the persons entitled to receive them. The incumbent's fee for an additional inscription on a small cross of wood must not exceed the current fee payable to the incumbent for the erection of such a monument.

6 Monuments in churches

Where a faculty is granted in connection with the erection of a monument in a church or any additional inscription thereon, the fees payable to the incumbent and the parochial church council or either of them are to be determined by the chancellor, who must specify the person or persons entitled to receive them.

7 The incumbent's fees

An incumbent who has not executed an assignment of parochial fees to the Diocesan Board of Finance may direct, either generally or in a particular case, that all or part of any fee which is payable under these provisions is payable to the minister performing the service or duty.

8 Reservation of grave space: vaults

Payment of any of the fees prescribed by the above table does not confer any right to construct a new vault or an exclusive right to a grave or vault. Where a faculty is granted conferring rights for a period specified in the faculty, the fees payable to the incumbent and the parochial church council or either of them are to be determined by the chancellor, who must specify the persons entitled to receive them.

9 Searches in church registers, etc

The search fee relates to a 'particular search' where the approximate date of the baptism, marriage or burial is known. The fee for a more general search of a church register is negotiable with the incumbent and the parochial church council.

10 Services in crematoria and unconsecrated cemeteries

The Church of England (Miscellaneous Provisions) Measure 1992 s 2 requires a minister of a parish, if requested, to perform a funeral service for defined parishioners in any appropriate crematorium or unconsecrated cemetery. The fees prescribed by the above table for such services, which are identical to the fees for services held in consecrated cemeteries, are mandatory except where a local authority or other crematorium authority has fixed charges for these services, in which case the authority's charges will apply.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1199. Amendment and repeal of private and local Acts.

1199. Amendment and repeal of private and local Acts.

Where the foregoing provisions or any order framed by the Church Commissioners is inconsistent with a private, local or personal Act affecting a parish¹, the commissioners, if requested by the parochial church council², may frame a draft scheme for the amendment or repeal of the Act to enable the foregoing provisions or any order made under them to apply to that parish³. After considering representations made to them within the time provided⁴, the commissioners may seal the draft scheme, with such amendments as they think fit⁵, and lay the scheme before Parliament⁶. The scheme comes into operation upon publication or such later date specified in it⁷, and the Act is thereupon amended or repealed to the extent provided in the scheme⁸. The commissioners may frame further schemes in substitution for, or revoke or amend, such schemes⁹.

1 For the meaning of 'parish', see PARA 1198 note 2 ante.

2 If there is no parochial church council the incumbent or minister may make the request: Ecclesiastical Fees Measure 1962, s 6 (1).

3 Ibid s 6 (1). There are provisions for sending copies of the scheme to the bishop, the parochial church council, the incumbent or minister, and other persons affected; for posting a copy at the parish church; for publishing a notice in a local newspaper; and for giving at least one month for representations: s 6 (2).

4 See note 3 supra.

5 Ecclesiastical Fees Measure 1962, s 6 (3).

6 Ibid s 6 (4). The scheme is subject to annulment by a resolution of either House of Parliament: see s 6 (4), (5).

7 Ibid s 6 (6).

8 Ibid s 6 (1).

9 Ibid s 6 (7).

UPDATE

1199 Amendment and repeal of private and local Acts

TEXT AND NOTES 1-5--Replaced by Ecclesiastical Fees Measure 1986 Sch 1 paras 1-4. These provisions now apply where any Parochial Fees Order (see PARA 1198) is inconsistent with any private, local or personal Act: Ecclesiastical Fees Measure 1986 Sch 1 para 1. 'Draft scheme' replaced by 'draft order': Sch 1 para 1.

TEXT AND NOTES 6-9--Repealed: 1986 Measure s 11. The Statutory Instruments Act 1946 applies to an order sealed by the Commissioners under 1986 Measure Sch 1 para 4 as if it were a statutory instrument and were made when sealed by them and as if 1986 Measure were an Act providing that the order is to be subject to annulment in pursuance of a resolution of either House of Parliament: Sch 1 para 5. The Commissioners must send copies of any order made under Sch 1 to the bishop of the diocese in which the parish is situated, the parochial church council, if any, and the incumbent or minister of the parish, and any person whose power of fixing fees or

whose right to receive fees is affected by the order and must publish in the London Gazette a notice stating they have made the order and specifying a place where copies of the order may be obtained: Sch 1 para 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1200. Fees in chapels licensed for limited districts.

1200. Fees in chapels licensed for limited districts.

When a bishop grants a licence for the publication of banns and solemnisation of marriages in a chapel for persons residing within a district limited in the licence, he may in the licence include such provisions concerning the amount, appropriation or apportionment of dues as he thinks fit¹. If, however, the Church Commissioners have by order prescribed fees², those fees are the fees payable³.

1 Marriage Act 1949, s 20 (1). As to the licensing of chapels for marriages, see PARAS 1012 ante. The provisions of s 20 apply to a church building shared by the Church of England under a sharing agreement: Sharing of Church Buildings Act 1969, s 6 (2). As to other buildings used by two or more churches, see s 6 (4) and PARA 330 ante. As to sharing agreements generally, see PARA 1186 et seq ante.

2 He under their power to prescribe fees: see the Ecclesiastical Fees Measure 1962, s 2, and PARA 1198 ante.

3 Ibid s 2 (5). Provisions in the bishop's licence as to the persons to whom the fee is payable and as to apportionment of fees, however, continue to have effect: s 2 (5). As to the current fees payable under the commissioners' order in respect of marriages, see PARA 1198 note 5 ante.

UPDATE

1200 Fees in chapels licensed for limited districts

TEXT AND NOTES 2, 3--1962 Measure replaced: Ecclesiastical Fees Measure 1986. Where a licence of a chapel includes a provision fixing a fee for the solemnisation of a marriage or any other matter for which a parochial fee (see PARA 1198) is prescribed by a Parochial Fees Order then, notwithstanding anything in the licence, the fee to be paid in respect of that matter is the fee prescribed by the order, but any provision of the licence as to the person to whom the fee in respect of that matter is to be paid continues to apply and where the licence provides for the fee to be paid to two or more persons the fee prescribed by the order is payable to those persons in the same proportions as under the provisions of the licence: *ibid* s 3(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1201. Fees when church is being rebuilt or repaired.

1201. Fees when church is being rebuilt or repaired.

When, on the rebuilding or repairing of a church or chapel in which banns may be published and marriages solemnised, the bishop orders that banns may be published and marriages solemnised in a consecrated chapel of the parish until the church is reopened for divine service¹, the fees in respect of them are to be applied during that period as the bishop, with the consent of the incumbent of the disused church or chapel, in writing directs².

1 Ie under the Marriage Act 1949, s 18 (1) (b): see PARA 1011 ante.

2 Ibid s 18 (2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1202. Fees in guild churches.

1202. Fees in guild churches.

The fees payable to vicars of City of London guild churches¹ in respect of the publication of banns and the solemnisation of marriages in their churches are prescribed by the bishop and are receivable by the vicars in addition to their stipends².

1 As to guild churches, see PARA 597 et seq ante.

2 City of London (Guild Churches) Act 1952, s 22 (3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(i) Parochial or Surplice Fees/1203. Fees for searches of registers.

1203. Fees for searches of registers.

A fee is due to the incumbent for making a search in or an extract from the parochial registers of baptisms, marriages and burials¹. In certain circumstances the incumbent is entitled to half the fees payable for searches in registers which he has deposited in the diocesan record office².

¹ See the Births and Deaths Registration Act 1836, s 35; Marriage Act 1949, s 63 (1); Births and Deaths Registration Act 1953, s 43 (2), Sch. 2; Registration Service Act 1953, s 23 (1), Sch. 1 paras 1, 13; and PARA 1115 ante. See further CREMATION AND BURIAL vol 10 (Reissue) PARA 1113; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 110; REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 524. The duty of officiating ministers to keep registers of baptisms and burials is imposed by the Parochial Registers Act 1812, s 1; Births and Deaths Registration Act 1836, s 1; and that of keeping marriage registers by the Marriage Act 1949, ss 53-55. The Parochial Registers Act 1812, s 16, saved the rights of ministers to all due legal and accustomed fees, and their powers and remedies for recovery. Fees for searches in and certificates of the registers of baptisms, and burials, and searches in the register of marriages for the period before 1837 are prescribed by order of the Church Commissioners made under the Ecclesiastical Fees Measure 1962: see PARA 1198 note 5 ante. Fees for certificates from the register of marriages are allowed by the Marriage Act 1949, s 63 (1) (b), and are prescribed by order made by the Secretary of State for Social Services under the Public Expenditure and Receipts Act 1968, s 5, Sch. 3. The current fees are contained in the Registration of Births, Deaths and Marriages (Fees) Order 1972, S.I. 1972 No. 911, art. 3, Schedule (see PARA 1038 ante), namely 50p where the application for the certificate is made at the time of registering the marriage or to the person by whom the book containing the entries is kept, and 75p in any other case.

² See the Parochial Registers and Records Measure 1929, s 11 (3), and PARA 1115 ante.

UPDATE

1203 Fees for searches of registers

NOTES--1836 Act s 35; 1812 Act; and 1929 Measure repealed. See now Parochial Registers and Records Measure 1978; and PARAS 1112-1118.

NOTE 1--Marriage Act 1949 amended: Marriage Act 1983 s 1(7), Sch 1. References to 1949 Act in the Public Expenditure and Receipts Act 1968 s 5, Sch 3 are now to 1949 Act as amended by 1983 Act: s 2(2). See MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

Fees for certificates from the register of marriages now £3.50 and £7: Registration of Births, Deaths and Marriages (Fees) Order 2002, SI 2002/3076 (see PARA 1035), Schedule (substituted by SI 2005/1997).

Public Expenditure and Receipts Act 1968 s 5, Sch 3 amended: SI 2008/678.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(ii) Legal Fees/1204. Fees to legal officers.

(ii) Legal Fees

1204. Fees to legal officers.

The right of ecclesiastical judges and their officers and subordinates to receive fees formerly depended on custom but is now regulated under Measure¹.

A fees committee² may frame orders relating to fees to be demanded, taken and received by any legal officer³ for the performance of the duties of his office⁴. Orders may establish tables of fees, whether by way of substitution for or variation of existing tables or otherwise, and may revoke, alter or add to earlier orders, and may contain incidental provisions⁵. An order cannot come into operation unless it has been laid before and approved by the General Synod, and it is subject to annulment by a resolution of either House of Parliament⁶. Any fee payable under an order is recoverable as a debt due by proceedings in the county court⁷.

Fees payable to any legal officer as remuneration for the performance of his duties in connection with proceedings under the Ecclesiastical Jurisdiction Measure 1963 must be fixed in the foregoing manner⁸.

1 The fees established under Measure do not cover all fees eg fees for marriage licences.

2 As to the appointment of three persons to be the fees committee, see the Ecclesiastical Fees Measure 1962, s 1 (3).

3 'Legal officer' means any person who carries out the duties of a legal officer in respect of work relating to the province of Canterbury or York, or any diocese, archdeaconry or cathedral church within either of those provinces, and is by law or custom required or permitted to act: *ibid* s 1 (2).

4 *Ibid* s 1 (1). The duties referred to include (1) specific duties imposed by any Act or Measure on the legal officer or on any person who delegates these duties to him (s. 1 (1) (a)); and (2) in the case of a legal secretary of an archbishop or bishop, general duties of giving advice and assistance to the archbishop or bishop, in which case the fee is a sum specified in the order payable annually, and where more than one person holds such office in one province or diocese the total amount payable to all such persons is the sum so specified (s. 1 (1) (b)). As to the extent of the Measure, see PARA 1198 note 4 *ante*. Fees were formerly fixed by order made under the Ecclesiastical Officers Remuneration Measure 1939 (repealed); see also the Pluralities Act 1838, s 131 (repealed); Ecclesiastical Fees Act 1867 (repealed); Incumbents Resignation Act 1871, s 17 (repealed). The Ecclesiastical Officers Remuneration Order (No. 2) 1953, S.I. 1953 No. 1709, was saved by the Ecclesiastical Fees Measure 1962, s 8 (2), Schedule, Part II. It has been amended by the Legal Officers Fees Order 1964, S.I. 1964 No. 1033. As to current fees prescribed under the Ecclesiastical Fees Measure 1962, s 1, see the Legal Officers Fees Order 1964, S.I. 1964 No. 1033; Legal Officers Fees (Faculties) Order 1967, S.I. 1967 No. 1001; Legal Officers Fees Order 1967, S.I. 1967 No. 1658; Legal Officers Fees Order 1971, S.I. 1971 No. 1130; Legal Officers Fees Order 1974, S.I. 1974 No. 1837; Legal Officers Fees Order 1975, S.I. 1975 No. 1087. Where an archbishop or a bishop has paid any sum by virtue of any such order the Church Commissioners must reimburse that sum to him: Ecclesiastical Fees Measure 1962, s 5 (b).

5 *Ibid* s 1 (4).

6 *Ibid* s 3; Synodical Government Measure 1969, s 2 (2).

7 Ecclesiastical Fees Measure 1962, s 1 (5).

8 Ecclesiastical Jurisdiction Measure 1963, s 63: see the Legal Officers Fees (Ecclesiastical Jurisdiction) Order 1966, S.I. 1966 No. 149; Legal Officers Fees Order 1975.

UPDATE

1204 Fees to legal officers

TEXT AND NOTES 1-7--Replaced by Ecclesiastical Fees Measure 1986.

Fees committees now replaced by the Fees Advisory Commission, detailed provisions as to which may be found in s 4 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 16, Sch 8 Pt II; and the National Institutions of The Church of England (Transfer of Functions) Order 1998, SI 1998/1715). The Commission may make recommendations as to the annual fees to be paid to ecclesiastical judges and legal officers in respect of the duties of their office as are specified by the Commission and as to the fees to be paid in respect of such duties performed by ecclesiastical judges and legal officers as are specified: 1986 Measure ss 5(1), 6(1) (amended by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 6 para 2). The Fees Advisory Commission may also make recommendations as to the fees to be paid in respect of such functions performed by Diocesan Advisory Committees and archdeacons as are specified, and an order may be made to give effect to those recommendations: 1986 Measure s 6(1A) (added by the Care of Places of Worship Measure 1999 Sch 2). The Commission may also make orders giving effect to their recommendations: 1986 Measure ss 5(1), 6(1) (amended by the 1991 Measure Sch 6 para 2). 'Legal officers' means the provincial registrars, diocesan registrars, bishops' legal secretaries and chapter clerks, and the deputy provincial and diocesan registrars: 1986 Measure s 10 (amended by the 1991 Measure Sch 6 para 4). It includes the registrar of tribunals (see PARA 1350B) for the purposes of the Clergy Discipline Measure 2003: 1986 Measure s 10 further amended by 2003 Measure s 44(4)(a). 'Ecclesiastical judges' means the Dean of the Court of Arches and the Auditor of the Chancery Court of York, the Vicars General of the provinces of Canterbury and York, the Commissary General and Diocesan Chancellors and the deputies of any of them: 1986 Measure s 10 (amended by the 1991 Measure Sch 6 para 4). It includes the president and deputy president of tribunals (see PARA 1350B) for the purposes of the Clergy Discipline Measure 2003: 1986 Measure s 10 further amended by 2003 Measure s 44(4)(b).

Orders made under the foregoing provisions may contain such incidental provisions as the Commission considers necessary or desirable (including provision for payments in respect of reasonable expenses incurred by ecclesiastical judges and legal officers on travel, subsistence, accommodation and the holding of court hearings) and must be laid before the General Synod. They do not come into force until approved by the General Synod: ss 5(2), (3), 6(2), (3) (ss 5(2), 6(2) amended by the 1991 Measure Sch 6 para 2). Where the Business Committee of the General Synod (as to which see PARA 383B) determines that either an order under the 1986 Measure s 5(1) or 6(1) does not need to be debated by the General Synod, then unless notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the order to be debated, or, in the case of an order under s 6(1) notice is so given by any member that he wishes to move an amendment to the order and at least 25 other members of the Synod indicate when the amendment is called that they wish the amendment to be moved, the order is deemed to have been approved without amendment: ss 5(4), 6(4) (both amended by the 1991 Measure Sch 6 para 2; and SI 1998/1715). The Statutory Instruments Act 1946 applies to an order under the 1986 Measure ss 5, 6 as if it were a statutory instrument and were made when so approved and as if 1986 Measure were an Act providing that any such order is subject to annulment in pursuance of a resolution of either House of Parliament: ss 5(5), 6(5).

By virtue of Sch 2, orders made under the 1962 Measure continue in force as if made under the 1986 Measure. For current fees, see the Legal Officers (Annual Fees) Order

2009, SI 2009/2107, and the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009, SI 2009/2105.

TEXT AND NOTE 8--1963 Measure s 63 amended: Care of Cathedrals (Supplementary Provisions) Measure 1994 s 8, Schedule para 6; Ecclesiastical Fees Measure 1986 s 11(2).

The 1963 Measure s 63 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(ii) Legal Fees/1205. Fees payable by ecclesiastical officers.

1205. Fees payable by ecclesiastical officers.

There are a number of fees payable to legal officers in respect of matters relating to the clergy, mainly relating to the admission and resignation of bishops¹. Such fees are usually the liability of the bishop or archbishop².

1 Fees have been prescribed under the Ecclesiastical Fees Measure 1962, s 1. See the Legal Officers Fees Order 1964, S.I. 1964 No. 1033; Legal Officers Fees Order 1967, S.I. 1967 No. 1658; Legal Officers Fees Order 1974, S.I. 1974 No. 1837; Legal Officers Fees Order 1975, S.I. 1975 No. 1087.

2 See the Legal Officers Fees Order 1964, Schedule; Legal Officers Fees Order 1967, Schedule; Legal Officers Fees Order 1974, art. 2, Schedule; Legal Officers Fees Order 1975, Schedule, Table I. The Church Commissioners must reimburse the sum to the bishop or archbishop: Ecclesiastical Fees Measure 1962, s 5 (b). Where any clerk in holy orders would have been liable to pay fees to a legal officer, whether required by law or custom, the liability has been transferred to the archbishop, bishop or capitular revenues of the cathedral church: s 4. The commissioners must reimburse the sum to the archbishop or bishop: s 5 (a).

UPDATE

1205 Fees payable by ecclesiastical officers

TEXT AND NOTES--1962 Measure repealed: Ecclesiastical Fees Measure 1986 Sch 1. See generally PARAS 1198, 1204.

TEXT AND NOTE 2--Where an archbishop or bishop has paid any sum by virtue of any order made or deemed to be made under 1986 Measure and the liability to pay that sum was imposed on him as archbishop or bishop, the Church Commissioners may reimburse that sum to him: s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(ii) Legal Fees/1206. Court fees.

1206. Court fees.

Rules may be made for regulating matters relating to costs, fees and expenses in respect of proceedings under the Ecclesiastical Jurisdiction Measure 1963¹.

¹ Ecclesiastical Jurisdiction Measure 1963, s 65 (1) (j). The rules are made by the rules committee and laid before the General Synod: s 65 (1), (2); Synodical Government Measure 1969, s 2 (2). The rules are subject to annulment by resolution of either House of Parliament: Ecclesiastical Jurisdiction Measure 1963, s 65 (3); Synodical Government Measure 1969, s 2 (2). See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 53-56, and PARAS 1300, 1301 post.

UPDATE

1206 Court fees

NOTE 1--1963 Measure s 65 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8 (see PARA 1296A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(iii) Offerings and other Dues/1207. Easter offerings.

(iii) Offerings and other Dues

1207. Easter offerings.

Easter offerings were a well-known and widely recognised form of contribution to the emoluments of the clergy, as are Easter offerings in the modern sense of allocating alms and other collections to the incumbent¹.

It is directed by rubric in the Book of Common Prayer that yearly at Easter every parishioner shall reckon with the parson, vicar or curate, or his or their deputy or deputies, and pay to him or them all ecclesiastical duties accustomably due, then and at that time to be paid².

Easter offerings are due of common right from every householder at the rate of one new penny³ for every member of his family over the age of sixteen⁴, unless a larger sum is due by custom⁵.

Easter offerings are assessable to income tax as profits accruing to the incumbent by reason of his office⁶.

1 *Cooper v Blakiston* [1907] 2 KB 688 at 700, CA; affd. sub nom. *Blakiston v Cooper* [1909] AC 104, HL. Following a decision of the General Synod of February 1975 most dioceses are likely to introduce in 1976 a system of calculating clergy incomes under which, in assessing the need for augmentation of stipends, any Easter offering will be counted as income and will consequently no longer have the effect of being a bonus.

2 Book of Common Prayer, rubric at the end of the Order for the Administration of the Lord's Supper or Holy Communion. Every person who by law or custom ought to make or pay any offering is bound, if he has not already paid in the preceding year, to pay at Easter: Tithes and Offerings (1548) (see note 5 infra).

3 I.e. twopence in the old currency: see the Decimal Currency Act 1969.

4 *Laurence v Jones* (1724) 1 Eag & Y 801; *Egerton v Still* (1725) Bund 198; *Carthew v Edwards* (1749) Amb 72.

5 *R v Hall* (1866) LR 1 QB 632. There is statutory provision for their recovery before two justices: see 7 & 8 Will. 3 c. 6 (Recovery of Small Tithes) (1695). This Act and the Tithes and Offerings (1548) were repealed by the Statute Law Revision Act 1887, s 1, Schedule, except as to tithes, offerings and duties which have not been commuted or are otherwise still payable. Easter offerings are expressly excepted from the law as to commutation of tithe: Tithe Act 1836, s 90 (prospectively repealed on the coming into operation of a scheme under the Corn Rents Act 1963, s 1: see PARA 1222 post), unless a special provision relating to them was inserted in the parochial agreement. The Acts of 1548 and 1695 remain in force in respect of such Easter offerings as are still payable, but are probably obsolete. If the custom to pay a particular sum is disputed in good faith the justices' jurisdiction is ousted: *R v Kidd* (1866) 16 LT 203.

6 *Blakiston v Cooper* [1909] AC 104, HL: see further INCOME TAXATION. If two Easters fall within the same tax year whereas an Easter does not fall within an adjoining tax year the Inland Revenue will normally allow the offerings to be spread over both years. Whitsun offerings are often given to assistant curates by analogy with Easter offerings given to incumbents. These Whitsun offerings are similarly taxable: *Slaney v Starkey* [1931] 2 KB 148.

UPDATE

1207 Easter offerings

NOTE 5--1836 Act s 90 repealed: Statute Law (Repeals) Act 1998.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(6) FEES AND OFFERINGS/(iii) Offerings and other Dues/1208. Customary dues.

1208. Customary dues.

In addition to Easter offerings other dues and offerings may be payable by custom¹.

¹ Any person who by law or custom is liable to pay any offerings must pay them on the four offering days to the parson of the parish where he happens to dwell, or in default must pay them at Easter: Tithes and Offerings (1548), s 10; see PARA 1207 note 5 ante. The four offering days are Christmas, Easter, Whitsuntide, and the feast of dedication of the church.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1209. Tithes.

(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS

1209. Tithes.

Tithes are the tenth part of all fruits, praedial, personal, and mixed, which are due to God and consequently to His church's ministers for their maintenance¹. Tithes are payable yearly out of all things which with the aid of cultivation² yield increase by the act of God, even though the increase is not realised every year³.

Tithes which arise merely and immediately from the ground, such as grain of all sorts, hay, wood, fruit and herbs, are called praedial tithes⁴. Tithes which arise from things immediately nourished by the ground, such as colts, calves, lambs, chickens, milk, cheese and eggs, are called mixed tithes⁵. Tithes which arise from the profits of labour and industry, being the tenth part of the clear gain after charges deducted, are called personal tithes⁶.

1 Cowell's Interpreter, s.v. 'Tithe'. See also 2 Bl Com (14th Edn) 24, 25. Tithes are not included in the expression 'other ecclesiastical dues, offerings, and emoluments': *Bolam v Allgood* (1913) 110 LT 8, CA. The jurisdiction of consistory courts to hear and determine proceedings for the recovery of tithe, long obsolete, was expressly abolished by the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (c).

2 Animals *ferae naturae* are not titheable, except by custom, nor is land which is in its nature barren, until it has been cultivated for seven years: 3 Burn's Ecclesiastical Law (4th Edn) 685.

3 As for example saffron though gathered but once in three years (3 Burn's Ecclesiastical Law (4th Edn) 684), and *silva caedua* (timber kept for annual cutting) (*Page v Wilson* (1821) 2 Jac & W 513 at 522).

4 2 Co Inst 649.

5 3 Burn's Ecclesiastical Law (4th Edn) 680.

6 2 Co Inst 656, 657.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1209 Tithes

NOTE 1--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1210. Great and small tithes.

1210. Great and small tithes.

Where the tithes are divided into great and small tithes, the great tithes, which are ordinarily the rectorial tithes, are those of corn, hay and wood, and the small tithes, which are ordinarily the vicarial tithes, are the remainder of the praedial tithes, and the mixed and personal tithes¹.

¹ Whether small tithe is grown in great or small quantity makes no difference: *Smith v Wyatt* (1742) 2 Atk 364.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1211. Land regarded as exempt from tithes.

1211. Land regarded as exempt from tithes.

Although tithes were primarily payable in respect of all land which was not naturally barren, the following land was regarded as exempt:

- (1) forest land while in the occupation of the Crown or its lessee¹;
- (2) church land or glebe of a parish while in the occupation of the parson or incumbent of the parish in his ecclesiastical capacity², but not the glebe of another parish³;
- (3) land in the occupation of an owner deriving title from one of the privileged orders, Cistercians, Templars or Hospitallers⁴;
- (4) land held free and discharged from tithe by one of the greater monasteries at the time of their dissolution⁵;
- (5) land in respect of which an arrangement, called a composition real, had been made by the owner of the tithe, with the consent of the Ordinary and the patron, that the land should be discharged from tithe⁶;
- (6) land in respect of which an arrangement, called a modus, could be proved to exist for the discharge of the liability in some other customary mode⁷;
- (7) land in respect of which a prescriptive right not to pay tithes can be shown to have arisen against the Crown or any lay person not being a corporation sole or any corporation aggregate, or a discharge from tithe can be proved, or non-payment or the payment of a modus can be proved for thirty years⁸ without any written consent to such non-payment or payment of a modus⁹, or, where the tithe is claimed by a corporation sole, non-payment or payment of a modus can be proved during two incumbencies and three years or sixty years, whichever is the shorter period¹⁰.

1 3 Burn's Ecclesiastical Law (4th Edn) 686.

2 *Priddle and Napper's Case* (1612) 11 Co Rep 8 b at 14a.

3 The maxim 'ecclesia ecclesiae decimasolvere non debet' (a church need pay no tithes to a church) is confined to ecclesiastical persons belonging to the same church: *Warden etc of St Paul's v Dean of St Paul's* (1817) 4 Price 65 at 74; *Sheris v Baskerville* (1714) 1 Eag & Y 709.

4 3 Burn's Ecclesiastical Law (4th Edn) 688.

5 The greater monasteries of the yearly value of £ 200 or upwards were dissolved by the Suppression of Religious Houses Act 1539, and by s 17 (repealed) the King and every other person who should have any parsonages appropriate, tithes, pensions and portions and other hereditaments of those monasteries should enjoy them discharged and acquitted of payments of tithes as freely and in as large and ample a manner as the abbots or other ecclesiastical governors of them had. The Suppression of Religious Houses Act 1539 was repealed, except for s 19, by the Statute Law (Repeals) Act 1969. A list of the greater monasteries is given in 3 Burn's Ecclesiastical Law (4th Edn) 690-695. Land held free by an alien monastery which passed to the Crown, and thence through lay hands to a greater monastery, are not exempt: *Page v Wilson* (1821) 2 Jac & W 513.

6 A composition real was where the present incumbent with his patron and Ordinary agreed by deed or by fine in the King's court that certain land should be freed and discharged from all manner of tithes in specie by reason of sown land or other real recompense given to the parson in lieu thereof: 2 Co Inst 490; *Ekins v Dormer* (1747) 3 Atk 534; *A-G v Bowles* (1754) 3 Atk 806 at 809.

7 'Modus decimandi' is money or other thing of value given annually in lieu of tithes: *Termes de la Ley*. A modus must be certain and invariable, beneficial to the parson himself, and different from the thing compounded for. As to the difference between a modus and a composition real, see *Ekins v Dormer* (1747) 3 Atk 534.

8 The exemption is absolute after sixty years: Tithe Act 1832, s 1. As to the evidence of non-payment required, see *Salkeld v Johnston* (1849) 1 Mac & G 242. Where a modus is set up as existing from time immemorial it need not be proved for each of the sixty years fixed by the Act for an indefeasible prescription, but the evidence is liable to be rebutted by proof of payment of tithe in kind before the sixty years: *Earl of Stamford v Dunbar* (1845) 13 M & W 822. Where the tithes were commuted before the time limited had expired, the time under the Act ceased to run: *A-G v Earl of Durham* (1882) 46 LT 16.

9 The consent must be expressly given for that purpose, in accordance with the requirements of the Tithe Act 1832, s 1: *Toynbee v Brown* (1848) 3 Exch 117.

10 Tithe Act 1832 (commonly called Lord Tenterden's Act), s 1. Mere non-payment of tithes apart from the Act is no evidence to defeat the title even of a lay impropiator (*Andrews v Drever* (1835) 3 C1 & Fin 314, HL), but no action to recover tithes may be brought by the Crown or any spiritual or eleemosynary corporation sole after the expiration of thirty years after accrual of the right or by any other person after twelve years: see the Limitation Act 1939, ss 4 (1)-(3), 31 (1).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1212. Tithe rentcharge.

1212. Tithe rentcharge.

The inconvenience of collecting tithe in kind and the fluctuating nature of the income derived from it has led to the compounding of tithes from very early times, voluntary compositions being called 'modus' or compositions real¹ and compositions by local or general statutes being called 'corn rents'² or tithe rentcharges. In 1836 a procedure was provided for the commutation of all tithes into tithe rentcharges either by agreement or by compulsion³, and in fact almost all tithes have been so commuted. Tithe rentcharge has now been extinguished, with an exception of little practical importance⁴, and it is no longer possible to commute tithes into tithe rentcharge⁵.

Instead of tithe rentcharge the landowner⁶ now pays to the Crown a redemption annuity, payable for sixty years from 2nd October 1936⁷, at the end of which (or sooner if the annuity is redeemed⁸) the land formerly subject to tithe will be absolutely freed from tithe, tithe rentcharge or any similar charge⁹. The rentcharge owner was compensated by the issue of redemption stock, guaranteed by the Crown¹⁰, and thus the connection between the tithe payer and the tithe owner has been finally severed.

Tithe rentcharge which, in 1936¹¹, was vested in the same person as the land out of which it issued was extinguished without any subsequent liability to pay a redemption annuity or right to redemption stock¹².

1 See PARA 1211 notes 6, 7 ante.

2 Tithes commuted for payments by statutes passed before 1836 are usually referred to as corn rents: see PARA 1222 note 1 post.

3 Tithe Act 1836, ss 32-68 (repealed or spent).

4 Tithe Act 1936, s 1: see PARA 1213 post.

5 Tithe Act 1951, s 10 (1), prospectively repealed by the Corn Rents Act 1963, s 3 (4), Schedule, on the coming into operation of a scheme under s 1: see PARA 1222 post.

6 For the purposes of the Tithe Act 1936, 'owner' means the estate owner of the fee simple except where the land is subject to a lease for a term of more than fourteen years at less than a rackrent, in which case it is the estate owner in respect of the term: s 17 (1), (3). If there is more than one such lease the owner is deemed to be the estate owner of the term on which the others are reversionary: s 17 (2). Where the land is held by a nominal trustee (as in the case of charitable or public trusts) or by the Public Trustee in circumstances in which he is not entitled to act in the trust, the managing trustees or the persons beneficially interested in the land are deemed to be the owners: s 17 (4). A highway authority is an owner within the meaning of s 17 (1): see *Tithe Redemption Commission v Runcorn UDC* [1954] Ch 383 at 388, [1954] 1 All ER 653, CA. The owner of the land in respect of which an annuity is charged is ascertained in accordance with the Tithe Act 1951, s 5, Sch. 1.

7 I.e. the appointed day under the Tithe Act 1936: see s 1.

8 See PARA 1219 post.

9 Tithe Act 1936, s 3.

10 See PARA 1215 post.

11 I.e. continuously between 26th February 1936 and 2nd October 1936: Tithe Act 1936, s 21.

12 Ibid s 21 (1).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1212 Tithe rentcharge

TEXT AND NOTE 5--1951 Act s 10(1), 1963 Act s 3(4), Schedule repealed: Statute Law (Repeals) Act 2004.

NOTES 7, 11, 12--1936 Act ss 1, 21 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1213. Extinguishment of tithe rentcharge.

1213. Extinguishment of tithe rentcharge.

All tithe rentcharge was extinguished on 2nd October 1936¹. 'Tithe rentcharge' means tithe rentcharge issuing out of land and payable in pursuance of the Tithe Acts², including a corn rent converted into a rentcharge under those Acts³ and extraordinary tithe rentcharge, but not including a rentcharge payable⁴ in respect of the tithes on any gated or stinted pasture or a sum or rate payable for each head of stock turned on land subject to common rights or held or enjoyed in common⁵. Therefore there has not been extinguished (1) tithe rentcharge which had been awarded on commutation but of which the apportionment has not been confirmed⁶; (2) all tithes which have not been commuted; and (3) those payments expressly excluded from the Tithe Acts of which the most important are tithes of fishing⁷ and tithes payable by rates⁸.

1 Tithe Act 1936, s 1.

2 I.e. the Tithe Acts 1836 to 1925, namely the Tithe Act 1836; Tithe Act 1837 (repealed); Tithe Act 1838; Tithe Act 1839; Tithe Act 1840; Tithe Act 1842; Tithe Act 1846; Tithe Act 1847; Tithe Act 1860; Inclosure, &c. Expenses Act 1868; Tithe Act 1878; Tithe Rentcharge Redemption Act 1885; Extraordinary Tithe Redemption Act 1886 (repealed); Tithe Act 1891; Tithe Act 1918; Tithe Act 1925. The Tithe Acts 1838, 1840, 1878 and 1885, are repealed with effect from the coming into operation of a scheme under the Corn Rents Act 1963: s 3 (4), Schedule; see PARA 1222 post.

3 See PARA 1222 note 1 post.

4 I.e. under the Tithe Act 1860, s 19.

5 Tithe Act 1936, s 47 (1).

6 There are a few cases where, although there have been agreements as to the amount of tithes payable, there has been no confirmation of an apportionment and therefore no discharge from tithes and no liability to pay rentcharge under the Tithe Act 1836, s 67 (repealed).

7 Fish, being *ferae naturae*, are not titheable (2 Co Inst 651), except by custom.

8 Tithe Act 1836, s 90, prospectively repealed on the coming into operation of a scheme under the Corn Rents Act 1963: see note 2 *supra*. Payments in lieu of tithes formerly payable in the City of London, were extinguished by the City of London (Tithes) Act 1947.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1213 Extinguishment of tithe rentcharge

TEXT AND NOTE 1--1936 Act s 1 repealed: Statute Law (Repeals) Act 2004.

NOTE 2--1836 Act, 1838 Act, 1839 Act (except ss 1, 37), 1840 Act, 1842 Act, 1846 Act, 1847 Act, 1860 Act (except s 24), 1878 Act, 1885 Act, 1891 Act, 1918 Act, 1925 Act repealed: Statute Law (Repeals) Act 1993, Statute Law (Repeals) Act 1998. 1963 Act s 3(4), Schedule repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 4--1860 Act s 19 repealed: Statute Law (Repeals) Act 1993.

NOTE 8--1836 Act s 90 repealed: Statute Law (Repeals) Act 1998.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1214.
Application to Crown land.

1214. Application to Crown land.

The extinguishment of tithe rentcharge applies to tithe rentcharge, to corn rents and to land belonging to any government department, or any officer on behalf of Her Majesty for government purposes, or belonging to Her Majesty in right of the Crown or the Duchy of Lancaster or the Duchy of Cornwall¹.

¹ Tithe Act 1936, s 35.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1215.
Compensation for extinguishment of tithe rentcharge.

1215. Compensation for extinguishment of tithe rentcharge.

Persons interested in tithe rentcharge which was extinguished in 1936¹ were compensated in respect of its extinguishment by the issue of redemption stock, charged by way of guarantee on the Consolidated Fund². The amount of stock to be issued was so much as would yield interest equal in amount to the gross annual value of the rentcharge³, less certain deductions⁴. Extraordinary tithe rentcharge owners were compensated on a different basis⁵. Compensation is, however, no longer payable⁶.

A sinking fund, established in the hands of the National Debt Commissioners, was started in 1942 to provide for the redemption of all outstanding stock on or before 1st October 1996, and the Treasury has the right to redeem the stock, at par, on or after 1st October 1986⁷.

Stock issued in respect of tithe rentcharges, which was vested in Queen Anne's Bounty and held on account of a benefice, became held by Queen Anne's Bounty on their general corporate account⁸. A sum was appropriated by Queen Anne's Bounty to the benefice in lieu of the amount of stock issued in respect of that benefice and became applicable for the augmentation of the benefice⁹, subject to withholding an amount for the tithe maintenance fund¹⁰.

1 See PARA 1213 ante.

2 Tithe Act 1936, s 2 (1). The stock is created as required by the Treasury and bears interest at 3 per cent: see s 24. Detailed financial provisions are contained in ss 24, 26, 28 (as amended by the Finance Act 1942, s 47 (2), Sch. 11; National Loans Act 1968, s 2, Sch. 1); Tithe Act 1951, s 12 (3), Sch. 2 (prospectively repealed on the coming into operation of a scheme under the Corn Rents Act 1963, s 1: see PARA 1222 post); National Loans Act 1968, s 2, Sch. 1; National Debt Act 1972, s 15 (1). Accounts must be prepared and sent annually to the comptroller and auditor general, who must lay copies and his report on them before Parliament: Tithe Act 1936, s 27.

3 This was calculated in the manner provided in *ibid* s 2 (3) (repealed).

4 *Ibid* s 2 (2), Sch. 1 (repealed).

5 *Ibid* s 29 (a) (repealed). Extraordinary tithe rentcharge was a charge which could be charged on hop grounds, orchards etc. by the joint operation of the Tithe Act 1836, ss 40, 42 (repealed), and the Tithe Act 1839, ss 26-33 (repealed).

6 Tithe Act 1936, s 5 (4) (repealed); Tithe Act 1951, s 2 (1).

7 See the notice dated 17th August 1937 published by the Treasury pursuant to the Tithe Act 1936, s 24 (3).

8 *Ibid* s 38, Sch. 3 para 1. The corporate account of Queen Anne's Bounty has been transferred to the general fund of the Church Commissioners: see PARA 1234 post.

9 *Ibid* s 38, Sch. 3 paras 2, 3.

10 The 'tithe maintenance fund' is the name commonly given to the fund established to make good any decrease occasioned by the Tithe Act 1936 in the emoluments of benefices: see s 38, Sch. 8 para 1, and PARA 1235 post.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1215 Compensation for extinguishments of tithe rentcharge

NOTE 2--1951 Act s 12(3), Sch 2 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 8-10--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1216. Functions of Commissioners of Inland Revenue.

1216. Functions of Commissioners of Inland Revenue.

The Tithe Redemption Commission, established in 1936¹, was dissolved and its functions were transferred to the Commissioners of Inland Revenue on 1st April 1960². The commissioners, as the successors of the Tithe Redemption Commission, are charged with the duty of determining the amount of stock to be issued and the persons entitled to receive the stock issued, of determining what redemption annuities were to be charged and with the general duty of executing the provisions of the Tithe Act 1936³. In making such determinations the commissioners may hold inquiries, and before reaching any decision must give interested parties an opportunity of making representations⁴. In the case of settled land, the tenant for life and not the remainderman must bear the payment of redemption annuities⁵.

The provisions of the Arbitration Act 1950⁶ apply to proceedings before the commissioners with respect to the administration of oaths, the correction of mistakes and errors in awards, the summoning and attendance and examination of witnesses, the costs of proceedings and the statement in the form of a special case for the decision of the court of any question of law arising in the course of the reference⁷. Subject to such an appeal on a question of law by way of special case a determination of the commissioners is binding and conclusive for all purposes⁸.

The commissioners must keep records of determinations, ascertainment and orders made by them⁹, and these records and other documents must be open to inspection by any person during usual office hours¹⁰. Copies or extracts may be taken¹¹ and, if duly certified, are admissible in evidence¹².

Where in any financial year the commissioners' proceedings include items relating to matters other than of routine which are not dealt with in accounts for the year¹³, a report of them must be sent to the Treasury and appended to the accounts¹⁴.

1 See the Tithe Act 1936, s 4 (1).

2 Tithe Act 1951, s 11; Tithe Redemption Commission (Transfer of Functions and Dissolution) Order 1959, S.I. 1959 No. 1971, arts. 1 (4), 2. References to the Tithe Redemption Commission or any of its officers in any Act or instrument passed or made before 1st April 1960 are to be construed as references to the corresponding officers of the Commissioners of Inland Revenue: arts. 1 (4), 3 (2). So long as the commissioners exercise any powers under the Tithe Acts 1836 to 1925 (listed in PARA 1213 note 2 ante) they may by order made with Treasury approval prescribe fees to be paid with respect to such business transacted or to be transacted by them under those powers as may be specified in the order: Agriculture (Miscellaneous Provisions) Act 1963, s 16 (2). As regards fees paid before the transaction of business the commissioners have a discretion to repay them in whole or in part if the business is not transacted or not wholly transacted: s 16 (3). The power to make an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: s 16 (5). At the date (1st May 1975) at which this volume states the law no such order had been made.

3 See the Tithe Act 1936, s 4 (2). The commission had jurisdiction to determine whether land was subject to tithe rentcharge: *Tithe Redemption Commission v Wynne* [1943] KB 756, [1943] 2 All ER 370, CA.

4 Tithe Act 1936, s 39 (2), Sch. 2 para 7.

5 *Re Leicester's Settled Estates, Coke v Earl of Leicester* [1939] Ch 77, [1938] 3 All ER 553.

6 See generally ARBITRATION.

7 Tithe Act 1936, s 39 (1); Arbitration Act 1950, s 44 (3); Tithe Act 1951, s 12 (3), Sch. 2.

8 Tithe Act 1936, s 39 (3); Tithe Act 1951, s 12 (3), Sch. 2.

9 Ibid s 7 (1). An entry in the record is evidence in legal proceedings of the determination, ascertainment or order referred to: s 7 (1).

10 Ibid s 7 (2). The custody of instruments of apportionment and the commissioners' functions in relation to them have been transferred to the Public Record Office: Tithe Apportionments (Transfer of Custody) Order 1966, S.I. 1966 No. 1600, made under the Tithe Act 1951, s 11.

11 Ibid s 7 (2). A fee is payable for the copy or extract: see the Tithe Fees Rules 1951, S.I. 1951 No. 1534. As to the custody of instruments of apportionment, see note 10 *supra*.

12 Tithe Act 1951, s 7 (3).

13 See PARA 1215 note 2 *ante*.

14 Tithe Act 1951, s 8 (2).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1216 Functions of Commissioners of Inland Revenue

NOTES 1, 3--1936 Act s 4 repealed: Statute Law (Repeals) Act 2004.

NOTE 2--1963 Act s 16 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 4, 6-8--1936 Act s 39, Sch 2, 1951 Act s 12(3), Sch 2 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTE 14--1951 Act s 8 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1217. Redemption annuities.

1217. Redemption annuities.

In the place of the extinguished tithe rentcharges¹ an annuity called a 'redemption annuity' is charged on land which bore tithe rentcharge, payable to the Crown from 2nd October 1936 to 1st October 1996². The amount payable under the redemption annuity is to bear the same proportion to the amount of the rentcharge as £91.56 bears to £100, in the case of agricultural land, and as £105 bears to £100 where none of the land is agricultural land³. Annuities charged in the place of extraordinary tithe rentcharge are 4 per cent of the capital value of the land⁴ and are in all cases borne by the owner⁵ of the fee simple⁶.

Owners of land subject to redemption annuities may voluntarily redeem the annuities at any time or may, in certain circumstances, be compelled to redeem them by the Commissioners of Inland Revenue⁷.

In order to secure that not more than one annuity is charged in respect of any given land, the commissioners have power to apportion and consolidate annuities⁸ and may also, with Treasury consent, extinguish annuities where the cost of collection and management is excessive in relation to their value⁹.

Redemption annuities are payable in one yearly sum on 1st October¹⁰. They are incumbrances which it is an offence on a vendor's part fraudulently to conceal¹¹ and are overriding interests for the purposes of land registration¹², but they are not registrable as land charges¹³. For income tax purposes five-sixths of any instalment may be deducted in computing the total income of the payer for the year of assessment in which it becomes payable¹⁴, but no deduction in respect of income tax may be made from any instalment of an annuity¹⁵.

Where there is a change of ownership in any estate or interest in land in respect of which an annuity is charged, it is the duty of the assignor of the estate or interest to furnish particulars to the Commissioners of Inland Revenue of the transfer and of the new owner within one month of the execution of the instrument¹⁶. Failure to furnish these particulars is an offence¹⁷.

1 See PARA 1213 ante.

2 Tithe Act 1936, s 3 (1).

3 Ibid s 3 (2); Decimal Currency Act 1969, s 10 (1). An annuity charged in respect of the land out of which a contingent rentcharge issued is an annuity of such amount as would have been charged had the rentcharge not been a contingent rentcharge, reduced by such amount to be determined by the Commissioners of Inland Revenue as appears to them just: Tithe Act 1936, s 3 (2) proviso. As to the transfer to the commissioners of the functions of the Tithe Redemption Commission, see PARA 1216 ante. A redemption annuity is not a land charge of any class: Land Charges Act 1972, s 2 (9).

4 Tithe Act 1936, s 29 (b). The capital value of the land is that as ascertained by the Extraordinary Tithe Redemption Act 1886 (repealed) and the Extraordinary Tithe Act 1897 (repealed): see the Tithe Act 1936, s 29 (a) (repealed).

5 For the meaning of 'owner', see PARA 1212 note 6 ante.

6 See the Tithe Act 1936, s 16 (1), and PARA 1220 post.

7 See PARA 1219 post.

8 Tithe Act 1936, s 10 (1), (2); Tithe Act 1951, ss 3, 10 (6).

9 Tithe Act 1936, s 10 (4).

10 Finance Act 1962, s 38 (1). By virtue of s 38 (2), s 38 (1) is construed as one with the Tithe Act 1936 and the Tithe Act 1951.

11 Tithe Act 1936, s 13 (8), applying the Law of Property Act 1925, s 183: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 318.

12 Tithe Act 1936, s 13 (11), applying the Land Registration Act 1925, s 70 (1).

13 Land Charges Act 1972, s 2 (9).

14 Income and Corporation Taxes Act 1970, s 66 (2).

15 Ibid s 66 (1).

16 Tithe Act 1951, s 5, Sch. 1 para 3. Rules prescribing forms and procedure are contained in the Tithe (Change of Ownership of Land) Rules 1962, S.I. 1962 No. 1937.

17 Tithe Act 1951, Sch. 1 para 3. An offender is liable on summary conviction to a fine not exceeding £5: Sch. 1 para 3.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1218.
Registration of redemption annuities.

1218. Registration of redemption annuities.

The Commissioners of Inland Revenue have power to prepare and seal a register of annuities charged in respect of land in any district where it appears to them expedient to do so owing to circumstances making it difficult for the existence, amount or incidence of the annuities to be ascertained¹. The amount of every annuity charged in the district in respect of which the register is prepared must be specified in the register and the land charged must be indicated on a map, sealed by the commissioners, on the same date as the register². Before sealing an annuities register the commissioners must determine the various matters of which particulars must be entered only after giving any person who satisfies them that he has an interest in the subject matter of the register an opportunity to make representations³. Any person who satisfies the commissioners or the court, as the case may be, that he has such an interest may also apply for a statement in the form of a special case on any question of law arising in relation to the matter⁴.

Once sealed an annuities register is conclusive evidence of the matters set out in it unless it is shown that interested persons did not have opportunities to make representations⁵, and it is also conclusive evidence that no annuity, other than those of which particulars are comprised in the register, was charged in respect of any land in the district covered by the register at the date of sealing it⁶.

An annuities register may not be amended, except to correct accidental errors or omissions⁷, but if the circumstances again arise which make the preparation of an annuities register expedient then a fresh register may be prepared and sealed⁸.

The commissioners have power to seal a declaration that no annuity is charged in respect of any land in a district, and such a declaration is also conclusive evidence of that fact⁹. These declarations and annuities registers are, when sealed, deposited at the commissioners' principal offices¹⁰.

1 Tithe Act 1951, s 1 (2). As to the transfer to the commissioners of the functions of the Tithe Redemption Commission, see PARA 1216 ante.

2 Ibid s 1 (4).

3 Ibid s 1 (5), applying the Tithe Act 1936, s 39 (2).

4 Ibid s 39 (2).

5 Tithe Act 1951, s 1 (6).

6 Ibid s 1 (7).

7 Ibid s 1 (8).

8 Ibid s 1 (10).

9 Ibid s 1 (11).

10 Ibid s 1 (9), (11).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1218 Registration of redemption annuities

TEXT AND NOTES 3, 4--1936 Act s 39 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1219.
Redemption and reduction of annuities.

1219. Redemption and reduction of annuities.

Annuities may be redeemed compulsorily or voluntarily, the consideration money required for redemption being in both cases determined by the Commissioners of Inland Revenue in accordance with the method prescribed by the Treasury¹. Annuities subject to compulsory redemption are those of £3 or less and those chargeable in respect of land the whole of which is, or in the commissioners' opinion is about to be, divided into numerous plots². Where an annuity is redeemable compulsorily the commissioners may serve on the owner³ of the land a redemption notice specifying the amount of the consideration money to be paid for the redemption and the redemption date⁴. The annuity will thereupon be extinguished as from the day following the preceding payment date⁵.

Where after 1st October 1962 an estate or interest in the whole or part of land upon which an annuity is charged is, for consideration in money or money's worth, disposed of or created in such manner as to bring about a change in the owner of the land or that part, any annuity which is or thereafter becomes charged wholly in respect of land to which the change of ownership extends must be redeemed compulsorily⁶.

An owner of land wishing of his own motion to redeem annuities charged on his land may, by application containing the necessary particulars, require the commissioners to notify him of the amount of consideration money required for the redemption of the annuities, and on payment of the amount notified to him accordingly the annuity is similarly extinguished⁷.

An owner of land may reduce the amount of the annuities charged on his land by a payment at any time of a capital sum of not less than £25 to the commissioners⁸, who may grant him a certificate charging any land in respect of which the annuity was charged, or any estate or interest in such land, with the sum paid, or any lesser sum, and interest; and the charge so created has such priority in relation to other charges on the property as may be specified in the certificate⁹.

Where at any time a payment has been made by a person, as being the owner of any land, pursuant to a redemption notice, and it appears that the person making the payment was not in fact the owner of the land, the extinguishment, discharge or reduction of the annuity is to be treated as having taken effect; the person making the payment is not entitled to recover it¹⁰.

If the land in respect of which the annuity is charged is wholly or partially washed away by the sea or destroyed by natural causes, the commissioners have power to reduce or extinguish the annuity¹¹.

1 Tithe Act 1936, s 15 (1); Tithe Act 1951, s 11 (5) (b). The method is prescribed in the Redemption Annuities (Extinguishment and Reduction) Rules 1937, S.R. & O. 1937 No. 557 (amended by S.I. 1962 No. 1499). As to the transfer to the commissioners of the functions of the Tithe Redemption Commission, see PARA 1216 ante.

2 Tithe Act 1936, s 11 (1); Finance Act 1958, s 38 (3). The figure of £3 may be increased by rules made by the Treasury under the Tithe Act 1936, s 15; Finance Act 1958, s 38 (3). Where part of land subject to an annuity is or is about to be divided into plots the commissioners may apportion the annuity so as to be able to require the redemption of the part of the annuity chargeable in respect of the land about to be divided: Tithe Act 1936, s 11 (2).

3 For the meaning of 'owner', see PARA 1212 note 6 ante.

4 Tithe Act 1936, s 15 (3), (4); Tithe Act 1951, s 11 (5) (b). The commissioners have extensive power to mitigate any hardship consequent upon service of a notice: see the Tithe Act 1936, s 15 (3) proviso; Tithe Act 1951, s 11 (5) (b). As to recovery of the payment required by the notice, see PARA 1221 post.

5 Tithe Act 1936, s 15 (5). The date of extinguishment will thus be 2nd October before the date of service of the notice: see PARA 1217 ante.

6 Finance Act 1963, s 32 (1).

7 Tithe Act 1936, s 15 (6); Tithe Act 1951, s 11 (5) (b); Redemption Annuities (Extinguishment and Reduction) Rules 1937 (amended by S.I. 1962 No. 1499). See note 5 supra.

8 Tithe Act 1936, s 15 (9); Tithe Act 1951, s 11 (5) (b); Redemption Annuities (Extinguishment and Reduction) Rules 1937 (amended by S. I. 1962 No. 1499).

9 Tithe Act 1936, s 15 (10); Tithe Act 1951, s 11 (5) (b).

10 Ibid s 4 (1).

11 Tithe Act 1936, s 34; Tithe Act 1951, ss 10 (9), 11 (5) (b).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1220. Recovery of annuities.

1220. Recovery of annuities.

An instalment of an annuity payable on any payment date is a debt due to Her Majesty by the person who is on that date the owner of any land in respect of which the annuity is charged¹. This is a debt owed personally by the owner², even though after the instalment accrues he assigns the land, and is recoverable by the Commissioners of Inland Revenue in any manner in which a debt to the Crown is normally recoverable³ and also in the county court by a special statutory procedure⁴.

Where an annuity, or a substituted annuity, is compulsorily redeemed⁵ the payment required by way of consideration money is similarly a debt due to Her Majesty from the person on whom the redemption notice has been duly served⁶ and may be recovered in the same manner as any other debt to the Crown⁷, and also in the county court by special statutory procedure⁸.

Debts due to Her Majesty in respect of the recovery of annuities⁹ are not subject to the Limitation Act 1939, and there is no maximum period within which action must be brought by the Commissioners of Inland Revenue¹⁰.

1 Tithe Act 1936, s 16 (1).

2 For the meaning of 'owner', see *ibid* s 17, and PARA 1212 note 6 ante.

3 See CROWN PROCEEDINGS AND CROWN PRACTICE.

4 See the Tithe Act 1936, s 16 (3), and PARA 1221 post. As to the transfer to the commissioners of the functions of the Tithe Redemption Commission, see PARA 1216 ante.

5 As to the redemption of annuities, see PARA 1219 ante.

6 Tithe Act 1936, s 16 (2).

7 See CROWN PROCEEDINGS AND CROWN PRACTICE.

8 See the Tithe Act 1936, s 16 (3), and PARA 1221 post.

9 *Ie* under *ibid* s 16.

10 Limitation Act 1939, ss 30 (1) proviso, 31 (1). For the minimum period, see PARA 1221 post.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1221. County court proceedings.

1221. County court proceedings.

The procedure in the county court under the provisions of the Tithe Act 1891 is preserved¹. Application for the recovery of an instalment of an annuity must be made to the county court of the district in which the land subject to the annuity is situate² but may not be made until three months after the instalment is due³. The procedure on an application is prescribed by special rules⁴, and is peculiar, although in many respects it is analogous to the procedure in an action⁵.

The county court has power to appoint a receiver, who may be nominated by the applicant⁶ and who has extensive powers to collect the rents and profits of the land subject to the annuity⁷.

If the land is occupied by the owner⁸ the court may appoint an officer to execute by means of distraint, in which case he has the same powers of distraint for the recovery of the sum ordered to be paid as were conferred by the Tithe Acts on the owner of a tithe rentcharge and no greater or other powers⁹; and if there is no sufficient distress the person entitled to the sum ordered to be recovered may proceed to obtain possession of the land¹⁰.

The Commissioners of Inland Revenue, however, may apply for the order for recovery to be executed as an order for the recovery of a debt from the respondent personally¹¹, in which case the order for recovery has the same effect as an ordinary judgment¹². Even if this has not originally been done, if the order for recovery is unsatisfied the county court may, of its own motion or on the application of the commissioners, direct that the order be executed as an order for the recovery of a debt from the respondent personally¹³.

In the absence of special directions the costs of applications abide the event¹⁴. The costs are taxed by the registrar and the ordinary scales apply¹⁵.

A party to an application or other matter under the foregoing provisions may appeal to the Court of Appeal as in any other county court proceedings¹⁶.

1 Tithe Act 1936, s 16 (3), applying with modifications the Tithe Act 1891, ss 2, 3, 7.

2 Ibid s 2 (1), as applied to the recovery of instalments of annuities by the Tithe Act 1936, s 16 (3).

3 Ibid s 16 (7).

4 Tithe Act 1891, s 3.

5 For the detailed procedure and the prescribed forms, see the Tithe Rentcharge Recovery Rules 1891, dated April 1891 (amended by S.R. & O. 1926 No. 440, S.R. & O. 1927 No. 391, S.R. & O. 1929 No. 109, S.R. & O. 1933 No. 89, S.R. & O. 1937 No. 1144, S.I. 1957 No. 1138, S.I. 1959 No. 1984). In relation to the recovery by the Commissioners of Inland Revenue of Crown debts, see the Tithe Rules 1937, S.R. & O. 1937 No. 1144 (amended by S.I. 1957 No. 1138; S.I. 1959 No. 1984). The Tithe Rules 1937, rr 9, 22 (as amended), apply the Tithe Rentcharge Recovery Rules 1891 subject to further amendments and exceptions. For the forms, see Court Forms.

6 Tithe Rentcharge Recovery Rules 1891, r 17 (amended by S.R. & O. 1937 No. 1144). The applicant in all cases of recovery of instalments of redemption annuities will be the Commissioners of Inland Revenue. The judge in the county court cannot refuse to issue an order for distress because the party applying for the order has refused to nominate a person for appointment as the officer to execute the order: *R v Judge Clements, ex parte Queen Anne's Bounty* (1933) Times, 28th July.

7 Tithe Rentcharge Recovery Rules 1891, rr 15, 17-23A (amended by S.R. & O. 1929 No. 109, S.R. & O. 1937 No. 1144).

8 The owner must be in occupation of the whole of the land: *Ecclesiastical Comrs v Upjohn* [1913] 1 KB 501. For the meaning of 'owner', see PARA 1212 note 6 ante.

9 Tithe Act 1891, s 2 (2). An order to distrain may be made applying to land situate in more than one parish: *Queen Anne's Bounty v Cooke* (1934) 151 LT 172, DC. As to the powers of a tithe rentcharge owner, see the Tithe Act 1836, s 81 (as to the construction of which see *Swaffer v Mulcahy* [1934] 1 KB 608). Under the Tithe Act 1836, s 81, not more than two years' arrears are recoverable by distress, but as redemption annuities are not subject to the Limitation Act 1939 as debts to the Crown (ss. 30 (1) proviso, 31 (1)) it seems doubtful whether, in view of the terms of the Tithe Act 1936, s 16 (3), this limitation of two years applies to distress for arrears of instalments of redemption annuity. The limitation deals with quantum only, and does not apply solely to the period immediately antecedent to the distress: *Queen Anne's Bounty v Blacklock's Executors* [1934] 1 KB 599, DC.

10 Tithe Act 1891, s 2 (2), referring to the Tithe Act 1836, s 82. In estimating whether there is a sufficient distress a tithe owner is bound to include the prospective value of growing crops: *Ex parte Arnison* (1868) LR 3 Exch 56. See also *Roden v Eyton* (1848) 6 CB 427. For the judge's powers where a combination of persons renders distress abortive, see *R v Judge Clements, ex parte Ferridge* [1932] 2 KB 535; *Rawlence and Squarey v Spicer* [1935] 1 KB 412, CA.

11 If as owner of the land the respondent can show that his ownership was vested in the capacity of trustee or representative and his rights of indemnity are insufficient to provide for his reimbursement, the court has a discretion to limit or release the personal liability: Tithe Act 1936, s 33.

12 Ibid s 16 (3) proviso; Tithe Rules 1937, r 18 (amended by S.I. 1959 No. 1984).

13 Tithe Rules 1937, r 17 (3).

14 Tithe Rentcharge Recovery Rules 1891, r 42.

15 Ibid r 43 (amended by S.R. & O. 1929 No. 109).

16 Tithe Act 1891, s 7; Administration of Justice (Appeals) Act 1934, s 2 (1), Schedule. As to appeals from the county court, see generally COURTS.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1221 County court proceedings

TEXT AND NOTES--Tithe Act 1891 repealed: Statute Law (Repeals) Act 1993.

NOTE 9--1836 Act s 81 repealed: Statute Law (Repeals) Act 1998.

NOTE 11--1936 Act s 33 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1222. Corn rents etc.

1222. Corn rents etc.

The Commissioners of Inland Revenue may provide by scheme for the appointment and redemption of corn rents, rentcharges and money payments liable to redemption under the Tithe Acts¹. A scheme may also provide for the extinguishment of such payments in certain cases², and may include a number of other provisions³. A scheme may be revoked or amended by a subsequent scheme⁴.

Until the first scheme made by the commissioners comes into operation such payments are subject to the provisions of the Tithe Acts relating to the redemption of tithe rentcharge⁵ or to the alteration of apportionments⁶, subject to certain modifications⁷.

The Treasury has power to lay before both Houses of Parliament an order providing for the extinguishment of all or any such payments⁸.

1 Corn Rents Act 1963, s 1 (1); and see the Tithe Act 1936, s 30 (1) (prospectively repealed on the coming into operation of the first scheme: Corn Rents Act 1963, s 3 (4), Schedule). Corn rents and the other payments referred to were created by Acts of Parliament (often Inclosure Acts) in lieu of tithes, and not by virtue of the Tithe Acts, usually when common or waste land was enclosed. Such payments were made subject to redemption by the Tithe Rentcharge Redemption Act 1885 (prospectively repealed on the coming into operation of the first scheme under the Corn Rents Act 1963, s 1: see s 3 (4), Schedule). The Tithe Act 1860, s 1 (repealed), made provision for the conversion of corn rents into tithe rentcharge. Corn rents not so converted are not tithe rentcharge: see the Tithe Act 1936, s 47 (1). As to the assessment of corn rents, see *Re Scremby Corn Rents* [1960] 3 All ER 462, [1960] 1 WLR 1227, CA.

A scheme made under the Corn Rents Act 1963, s 1, may apply to additional payments which by virtue of any enactment or by custom are charged or otherwise payable in relation to land wholly or partly in lieu of tithes: s 1 (2). All payments which may be made subject to a scheme are referred to as 'rents': s 1 (2). In regulating the redemption of rents a scheme must provide that redemption may only be on the application or with the consent of the person who, under the scheme, would be liable to defray the consideration money: s 1 (4). Such consent may be dispensed with under the scheme where the amount payable to that person in the preceding year did not exceed £2 or where the land is, or is about to be, divided into plots: s 1 (4) proviso. A scheme is made by statutory instrument and is subject to annulment by a resolution of either House of Parliament: s 1 (7). At the date (1st May 1975) at which this volume states the law no scheme had been made under s 1.

2 Provision for extinguishment may be included in cases where a rent has been redeemed, or a person is entitled both to the rent and to the land, or all persons having an interest in the rent or the land agree: *ibid* s 1 (3).

3 A scheme may include provisions reproducing, with modifications, the effect of any of the enactments of the Tithe Act 1836 to 1925 applied to corn rents and other payments by the Tithe Act 1936, s 30 (1): Corn Rents Act 1963, s 1 (5) (a); and see notes 5, 6 *infra*. The Acts of 1836 to 1925 are listed in PARA 1213 note 2 *ante*. A scheme may apply to the redemption of rents any enactment relating to the redemption of tithe rentcharge: Corn Rents Act 1963, s 1 (5) (b). The scheme may also apply provisions of the Arbitration Act 1950 (Corn Rents Act 1963, s 1 (5) (c)), and may provide for the payment of fees to the commissioners (s. 1 (5) (d)).

4 *Ibid* s 1 (6).

5 These are to be found in the Tithe Act 1846, ss 6-12; Tithe Act 1860, ss 31, 32, 35, 38, 39; Tithe Act 1878, ss 1, 3, 5, 6; Tithe Act 1918, ss 3-6; Tithe Act 1925, ss 19, 20. All these sections (except the Tithe Act 1846, s 9, and the Tithe Act 1925, s 20) are prospectively repealed by the Corn Rents Act 1963, s 3 (4), Schedule, on the coming into operation of the first scheme under s 1: see note 1 *supra*.

6 These are to be found in the Tithe Act 1836, s 72; Tithe Act 1842, s 14; Tithe Act 1846, s 13; Tithe Act 1860, ss 10-16; Tithe Act 1925, s 18. All these sections are prospectively repealed by the Corn Rents Act 1963, s 3 (4), Schedule, on the coming into operation of the first scheme under s 1: see note 1 *supra*.

7 Tithe Act 1936, s 30 (1) (prospectively repealed: see note 1 supra); Corn Rents Act 1963, s 1 (1). The powers formerly exercised by the Minister of Agriculture are now exercised by the Commissioners of Inland Revenue: Tithe Act 1936, s 30 (1); Tithe Act 1951, s 10 (4); Tithe Redemption Commission (Transfer of Functions and Dissolution) Order 1959, S. 1. 1959 No. 1971, arts. 1 (4), 3 (2). The procedure to be followed in connection with the apportionment and redemption of annuities created under the Tithe Act 1918 is prescribed by the Corn Rent Annuities (Apportionment and Redemption) Rules 1951, S.I. 1951 No. 1535.

8 Tithe Act 1936, s 30 (2); Corn Rents Act 1963, s 2. If a resolution is passed by both Houses approving the order it takes effect from a day appointed by the Treasury: Tithe Act 1936, s 30 (2); Corn Rents Act 1963, s 2.

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1222 Corn rents etc

NOTES 1, 5, 6--1963 Act s 3(4), Schedule repealed: Statute Law (Repeals) Act 2004.

NOTE 1--1885 Act, 1936 Act s 30, repealed: Statute Law (Repeals) Act 1998.

NOTE 3--For 'Arbitration Act 1950' read 'Arbitration Act 1996 Pt I': 1963 Act s 1(5)(c), amended by Arbitration Act 1996 Sch 3 para 17. 1936 Act s 30 repealed: Statute Law (Repeals) Act 1998.

NOTES 5, 6--All cited Acts repealed: Statute Law (Repeals) Act 1998.

TEXT AND NOTE 8--1936 Act s 30, 1963 Act s 2 repealed: Statute Law (Repeals) Act 1998.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(7) TITHES, PAYMENTS IN LIEU OF TITHE AND OTHER PAYMENTS/1223. First fruits and tenths.

1223. First fruits and tenths.

First fruits, 'primitiae', or 'annates', were the first year's whole profits of the spiritual preferment according to a valuation determined in 1292¹. Tenths, or 'decimae', were the tenth part of the annual profit of each living by the same valuation¹. These payments were at first made to the Pope, but at the Reformation they were appropriated to the Crown². The Crown property in first fruits and tenths was later transferred to Queen Anne's Bounty³.

In 1852 first fruits and tenths were commuted for annual payments⁴. With the exception of some small sums payable by lay persons in respect of sinecure prebends or lay rectories, or by clergy in respect of sinecure rectories legally vested in them but not attached to any benefice with cure of souls, these have been extinguished⁵.

The Church Commissioners may determine and accept redemption money for first fruits and tenths not so extinguished⁶.

1 First fruits and tenths were first introduced into this country by Pandulph, the Pope's Legate during the reigns of King John and Henry III: 1 Bl Com (14th Edn) 283; *Bishop of Rochester v Le Fanu* [1906] 2 Ch 513.

2 Appointment of Bishops Act 1533, s 2 (repealed); 26 Hen 8 c. 3 (1534) (First Fruits and Tenths), ss 1, 8 (repealed).

3 Queen Anne's Bounty Act 1703 (repealed). As to Queen Anne's Bounty, see PARA 361 ante.

4 Order in Council made 27th November 1852, pursuant to Queen Anne's Bounty Act 1838, s 19 (repealed).

5 First Fruits and Tenths Measure 1926, s 2.

6 Ibid s 5; Church Commissioners Measure 1947, ss 2, 18 (2).

UPDATE

1209-1223 Tithes, Payments in Lieu of Tithe and other Payments

Tithe redemption annuities chargeable under the Tithe Acts 1936 and 1951 were extinguished as from 2 October 1977 and the relevant statutory provisions were repealed accordingly: Finance Act 1977 s 56, Sch 9 Pt V (repealed: Statute Law (Repeals) Act 2004). All tithe records have been transferred to the Public Record Office: SI 1981/232.

1223 First fruits and tenths

TEXT AND NOTES 5, 6--1926 Measure repealed: Statute Law (Repeals) Act 1993.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1224. Property owned by ecclesiastical person.

(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST

1224. Property owned by ecclesiastical person.

Property which is owned by any person in the capacity of a representative of the Church of England is ecclesiastical property. Where a person owns property and the relation between the person and the thing owned arises out of and can be defined by reference to spiritual functions to be performed on behalf of the Church of England, the property is owned by the person in the capacity of a representative of the Church of England, and is ecclesiastical property¹.

Thus ecclesiastical property includes every legal right and every description of property which is vested in any person for the purpose of furthering the spiritual work of the Church, such as the right to levy a church rate², the right to demand pew rents (where that right still subsists)³, and buildings or other property conveyed upon trust to be used for furthering the spiritual work of a parish or of the Church at large.

1 *Rector and Churchwardens of St George's, Hanover Square v Westminster Corp'n* [1910] AC 225, HL. See also PARA 1051 ante.

2 See PARA 586 ante.

3 See PARA 1092 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1225. Chapels.

1225. Chapels.

The word 'chapel' is commonly applied to a sanctuary or place of Christian worship, whether or not in connection with the Church of England¹, not being the church of a parish or the cathedral church of a diocese², but in strict legal parlance a chapel is a building consecrated³ for the purposes of divine worship in accordance with the tenets of the Church of England⁴, other than the church of a parish or the cathedral church of a diocese⁵.

A chapel may have a district attached to it called a chapelry⁶, or it may be built for the convenience in prayer and preaching only of parishioners who live far from the parish church, in which case it is called a chapel of ease⁷. A chapel which has an ancient division of a parish attached to it by immemorial custom, with the parochial rights of baptising and burying, is a parochial chapel⁸.

1 In *Hornsey Local Board v Brewis* (1890) 60 LJMC 48 the court apparently assumed that the nonconformist meeting house to which the case referred was capable of being a 'chapel'.

2 Oxford English Dictionary, 'Chapel'.

3 It has been said that private chapels should be consecrated by the bishop of the diocese (3 Co Inst 203), but such is not the modern practice.

4 The legal meaning of 'chapel' is a chapel of the Church of England: *Caiger v Vestry of St Mary, Islington* (1881) 50 LJMC 59 at 64, per Grove J. In the New Parishes Acts and Church Building Acts Amendment Act 1869 'church' and 'chapel' apply only to churches and chapels of the established Church of England (s. 14) and therefore, since it applies to a 'chapel consecrated or unconsecrated' (s. 2), the implication is that a building may be legally a chapel of the Church of England although it is not consecrated. The Interpretation Measure 1925, s 3, defines 'church' as any church or chapel consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England. This definition is amplified in the Pastoral Measure 1968, s 90 (1): see PARA 865 note 1 ante.

5 A chapel may be annexed to or form part of the structure of a parish church or cathedral church, and where this is the case the question whether it does or does not form part of that church is one of fact to be decided by reference to the history of the foundation: *Duke of Norfolk v Arbuthnot* (1880) 5 CPD 390, CA. The Revised Canons Ecclesiastical, Canon B 14 para 2, requires Holy Communion to be celebrated as frequently as is convenient in churches and chapels dependent on a parish church.

6 A chapelry is the same thing to a chapel as a parish to a church, being the precinct and limits thereof: Jacob's Law Dictionary, 'Chapelry'. Thus the Act of Uniformity 1662, s 22 (repealed), required a prayer book to be obtained by the parishioners of every parish church and chapelry, cathedral church, college and hall.

7 Jacob's Law Dictionary, 'Chapel'. In such a case sacraments and burials ought to be performed in the parish church: 2 Roll Abr 340.

8 A parochial chapelry must be coeval with the parish, but its existence may be inferred from modern usage, provided the usage is immemorial: *Carr v Mostyn* (1850) 5 Exch 69.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1226. Chapel of ease.

1226. Chapel of ease.

A chapel of ease, which is a chapel for the convenience of parishioners who live at a distance from the parish church¹, can only be constituted with the consent of the Ordinary, patron and incumbent². It is served either by the incumbent or a stipendiary curate of the parish, or by a minister specially appointed to it by the incumbent of the parish and removable by him, or appointed by some other person or persons in whom, in exceptional instances, the appointment is vested³, that person being, unless some exceptional provision applies, subordinate to the incumbent of the mother church, to which church all the rights of performing the sacraments appertain⁴. Such a chapel may become the parish church of an area which is constituted a new parish under the provisions of a pastoral scheme⁵.

In some cases, by a private Act of Parliament, a chapel of ease is made presentative⁶. The minister is then instituted and inducted by the bishop on the presentation of the patron⁶. In all other cases he is licensed by the bishop to the chapel⁷.

A chapel may be founded by the Sovereign without being subject to the jurisdiction of the Ordinary. A chapel so founded is called a free chapel⁸.

A declaration of redundancy may be made in respect of a chapel of ease which is no longer required as such⁹.

1 See PARA 1225 ante.

2 Kennett's Parochial Antiquities 585, 586.

3 Gib Cod 209, 210; 2 Burn's Ecclesiastical Law (4th Edn) 56-61; *Dixon v Kershaw* (1766) Amb 528; *R v Bishop of Oxford* (1806) 7 East 600; *R v Davie* (1837) 6 Ad & El 374.

4 *Nesbitt v Wallace* [1901] P 354.

5 See the Pastoral Measure 1968, s 27, and PARA 538 ante.

6 *R v Foley* (1846) 2 CB 664.

7 2 Burn's Ecclesiastical Law (4th Edn) 58. The incumbent of a parish has a right, and it is his duty, to nominate a minister to officiate in a consecrated building in the parish, and the bishop may be compelled by mandamus to license that minister: *R v Bishop of London* (1838) 1 Will Woll & H 151.

8 Perhaps a subject authorised by the Sovereign may found a free chapel (Degge, Parson's Counsellor (7th Edn) 227); but see Gib Cod 210, 211. See further PARA 732 ante.

9 See the Pastoral Measure 1968, s 28, and PARA 1119 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1227. Private and proprietary chapels.

1227. Private and proprietary chapels.

Private chapels are chapels which persons have built at their own charge in or near their own houses in which they and their families may perform religious duties. A private chapel is repaired and maintained at the expense of the person to whom it belongs, who may appoint whom he pleases to minister there¹, although that minister, unless he is the incumbent of the parish in which the chapel is situated, and the chapel is consecrated², must be authorised by the Ordinary³ and have the consent of the incumbent⁴. The chaplain ministering in such a chapel must celebrate Holy Communion there only seldom on Sunday and other greater feast days so that the residents may resort to their parish church and there attend divine service⁵.

The attendance at divine worship in a private chapel need not be confined to the members of the owner's family, and any person or several persons together may provide a building for the purpose of celebrating divine worship and the sacraments for the benefit of such persons as desire to attend and the proprietors of the building are willing to admit⁶. Such a building is commonly called a proprietary chapel⁷. It need not necessarily be consecrated⁸.

The minister of such a chapel is appointed by the owner of the chapel or the persons having the right of appointment under the terms of any trust under which the chapel is held⁹. He must be licensed by the bishop to perform service there with the consent of the incumbent of the parish in which the chapel is situate¹⁰, and the bishop can at any time revoke the licence¹¹. A succeeding incumbent may refuse consent to his officiating under a licence granted by the bishop with the consent of the previous incumbent¹².

1 *MacAllister v Bishop of Rochester* (1880) 5 CPD 194.

2 *Moysey v Hillcoat* (1828) 2 Hag Ecc 30 at 46.

3 Lynd 233; *Carr v Marsh* (1814) 2 Phillim 198 at 206; *Kitson v Drury* (1865) 11 Jur NS 272; *Richards v Fincher* (1874) LR 4 A & E 255 at 262; *Finch v Harris* (1702) 12 Mod Rep 640; Revised Canons Ecclesiastical, Canon C8 para 2 (see PARA 666 ante).

4 *Hodgson v Dillon* (1840) 2 Curt 388 at 390; *Jones v Jelf* (1863) 8 LT 399 at 401. See PARA 702 ante.

5 Revised Canons Ecclesiastical, Canon B41 para 1.

6 The proprietors may refuse to admit anyone at their discretion: *Bosanquet v Heath* (1860) 3 LT 290; *Hancock v Stephens* (1915) 31 TLR 434, CA.

7 Proprietary chapels are not now encouraged.

8 *Hodgson v Dillon* (1840) 2 Curt 388 at 390. Holy Communion can only be celebrated in an unconsecrated building with the permission of the diocesan bishop: Revised Canons Ecclesiastical, Canon B40.

9 The incumbent has no right to nominate the chaplain of a private chapel: *Herbert v Dean and Chapter of Westminster* (1721) 1 P Wms 773.

10 *Moysey v Hillcoat* (1828) 2 Hag Ecc 30; *Hodgson v Dillon* (1840) 2 Curt 388; *Richards v Fincher* (1874) LR 4 A & E 255.

11 *Sedgwick v Bishop of Manchester* (1869) 38 LJ Eccl 30.

12 *Richards v Fincher* (1874) LR 4 A & E 255.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1228.
Chapels at public institutions.

1228. Chapels at public institutions.

Statutory provisions under which a Church of England clergyman may perform offices and services, other than the solemnisation of marriage, on premises forming part of a university, college, school, hospital or public or charitable institution, free from the control of the incumbent of the parish, have already been discussed¹.

¹ See PARA 731 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1229. Mission rooms.

1229. Mission rooms.

An unconsecrated building may be used by or with the authority of the incumbent or, in his absence, the curate of a parish, as a place of assembly for the purpose of religious worship in accordance with the liturgy of the Church of England¹. When an unconsecrated building is habitually so used it is commonly called a 'mission room'. Buildings used for this and for cognate purposes, such as Sunday schools, parish halls or rooms and parochial schools, are ecclesiastical property if the purpose for which they were founded or built is a spiritual purpose². Where the question whether the purpose is a spiritual purpose can be answered by reference to a trust deed or deeds relating to the property it must be so answered, but in many cases there is either no trust deed, or the terms of the deed cannot be ascertained or are insufficient to determine the purpose, in which case the question must be answered by reference to the history of the foundation of the charity or of the erection of the building, and this history if otherwise in doubt must be ascertained by reference to the purposes for which the property has in fact been used³.

¹ See the Liberty of Religious Worship Act 1855, s 1. As to the necessity of the bishop's licence, see PARA 691 ante.

² See PARAS 1051, 1224 ante.

³ The printed reports of the Charity Commissioners appointed in 1818 are admissible in evidence of the facts stated in them: Charities Act 1960, s 36 (2).

UPDATE

1229 Mission rooms

NOTE 1--Repealed: Statute Law (Repeals) Act 1977.

NOTE 3--1960 Act s 36 now Charities Act 1993 s 93: see CHARITIES vol 8 (2010) PARA 595.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(8) PROPERTY ECCLESIASTICAL BY REASON OF OWNERSHIP OR TRUST/1230. Vesting of trust property in diocesan authority.

1230. Vesting of trust property in diocesan authority.

There are provisions¹ for the vesting in the diocesan board of finance or other diocesan authority² of certain interests in property which are acquired or held on charitable trusts, established for ecclesiastical purposes of the Church of England³.

The interests concerned are estates and interests in land⁴ and interests in personal property held or to be held on permanent trusts⁵, with certain exceptions⁶, and whereof (1) no present or past trustee⁷ is or has been any person other than an incumbent or churchwardens⁸ or an ecclesiastical corporation sole acting as a joint trustee with an incumbent or churchwardens⁹; or (2) the presently acting trustees, whether or not validly appointed, are the persons specified in head (1) above, unless acting in contravention of the terms of the trust¹⁰; or (3) the presently acting trustee is the parochial church council not validly appointed, if the trusts have immediately previously been administered by the persons specified in head (1) above, unless the latter were acting in contravention of the terms of the trust¹¹.

Upon becoming aware of any property which may be affected by the vesting provisions the diocesan authority¹² must consider whether the provisions apply to any interest in it¹³. If it considers that the provisions apply, notice of the proposed vesting must be given to the persons entitled to the general control and management of the property, the incumbent and the Charity Commissioners¹⁴. An opportunity must be given for objections and representations, which the authority must consider¹⁵. If the Charity Commissioners do not object or withdraw any objection and the authority remains of the opinion that the property is subject to the vesting provisions, the authority must, by declaration under seal, vest in itself as custodian trustee¹⁶ the interest affected¹⁷.

After 1964¹⁸ neither an incumbent nor churchwardens may acquire any interest in land or personal property to which the foregoing provisions apply, except an interest in personal property by gift or under a will, without the diocesan authority's consent¹⁹.

The managing trustees of property vested in the diocesan authority as custodian trustee under the foregoing provisions may not sell, lease, let, exchange, charge or take any legal proceedings in relation to it without the authority's consent²⁰.

1 Ie under the Incumbents and Churchwardens (Trusts) Measure 1964.

2 'Diocesan authority' means the diocesan board of finance or any existing or future body appointed by the diocesan synod to act as trustees of diocesan trust property: *ibid* s 1; Synodical Government Measure 1969, s 4 (7).

3 Incumbents and Churchwardens (Trusts) Measure 1964, s 2 (1).

4 *Ibid* s 2 (2) (i). 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings and any other corporeal hereditaments; also a manor, a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, over or derived from land; but not an advowson nor an undivided share in land: see s 1.

5 *Ibid* s 2 (2) (ii). 'Permanent trusts' means any trust of property which is a permanent endowment within the meaning of the Charities Act 1960, s 45 (3): Incumbents and Churchwardens (Trusts) Measure 1964, s 1. Any question as to whether personal property is held or to be held on permanent trusts must be determined for the purposes of s 2 by a person appointed by the bishop or, during a vacancy in a see, the guardian of the spiritualities (s. 2 (3)), but without binding the Charity Commissioners (s. 2 (3) proviso).

6 The exceptions are any estate or interest (1) vested in an incumbent (as defined below), by virtue of his office, in any church, churchyard or burial ground or in the endowments of his benefice (as defined below); (2) of an incumbent in land or buildings vested in him before 13th April 1960 by virtue of the New Parishes Measure 1943, s 17 (as originally enacted), or thereafter by virtue of s 16 (1), (2); Church Property (Miscellaneous Provisions) Measure 1960, s 6 (see PARA 1081 ante); (3) vested in the Official Custodian for Charities; (4) being a church educational endowment as defined in the Diocesan Education Committee Measure 1955, s 3 (see EDUCATION vol 15(2) (2006 Reissue) PARA 1435); (5) being a term of years absolute for a year or from year to year or for any shorter period; (6) vested in churchwardens in the goods, ornaments and movables of the church of which they are churchwardens and in an incumbent and churchwardens (as defined below) in any other chattel: Incumbents and Churchwardens (Trusts) Measure 1964, s 2 (2).

'Incumbent' includes any minister with a separate cure of souls but not a curate in charge of a conventional district; 'endowments of the benefice' includes the parsonage house and glebe of the benefice together with all their appurtenances and easements and any land or personal property held by the incumbent under the Parsonages Measure 1938, and all incorporeal hereditaments belonging to the benefice; and 'incumbent or churchwardens' means any incumbent and the churchwardens of the parish comprising the benefice of that incumbent or of any parish comprised in any united benefice of that incumbent, and is deemed to refer to them or any of them jointly or severally: Incumbents and Churchwardens (Trusts) Measure 1964, s 1. 'Parish' means an ecclesiastical parish or district, whether old or new, the minister of which has a separate cure of souls there and includes each parish which remains a separate parish, in cases where a scheme of union provides for the union of benefices but not of parishes, but does not include a parish of which the parish church is a cathedral: s 1. For the meaning of 'benefice', see the Interpretation Measure 1925, s 3, and PARA 768 note 1 ante.

7 le other than the personal representatives of a sole surviving trustee.

8 Incumbents and Churchwardens (Trusts) Measure 1964, s 2 (1) (a) (i). For the meaning of 'incumbent or churchwardens', see note 6 supra.

9 Ibid s 2 (1) (a) (ii).

10 Ibid s 2 (1) (b).

11 Ibid s 2 (1) (c).

12 As to the diocesan authority, see note 2 supra.

13 Incumbents and Churchwardens (Trusts) Measure 1964, s 3 (2), Schedule para 1. Where an incumbent or churchwardens, an ecclesiastical corporation sole or a parochial church council hold, acquire or administer any interest to which the Measure applies, they have a duty to inform the diocesan authority of it in writing: s 3 (1).

14 Ibid Schedule para 2.

15 See ibid Schedule paras 2-5.

16 'Custodian trustee' has the same meaning as in the Public Trustee Act 1906 (see s 4, and TRUSTS vol 48 (2007 Reissue) PARA 792): Incumbents and Churchwardens (Trusts) Measure 1964, s 1.

17 Ibid s 3 (2), Schedule para 5. The vesting declaration has the operation specified in the Trustee Act 1925, s 40 (1) (b) (see TRUSTS vol 48 (2007 Reissue) PARA 866): Incumbents and Churchwardens (Trusts) Measure 1964, s 3 (3). The vesting is subject to all trusts, charges, tenancies, liabilities and other legal incidents: s 3 (5). The person in whom the property subject to the declaration is vested must make or concur in making such transfers or other assurances to the diocesan authority as the authority may reasonably require: s 3 (4). The jurisdiction and powers of the High Court or the Charity Commissioners to establish a scheme for the administration of any charity are preserved: s 3 (6); see CHARITIES vol 8 (2010) PARA 256. The authority must inform persons who made objections or representations or who tendered advice of the execution of the declaration: Schedule para 7. The declaration may relate to more than one item of property or to property held by more than one body of trustees: Schedule para 8.

18 The Incumbents and Churchwardens (Trusts) Measure 1964 came into operation on 1st January 1965: s 6 (2).

19 Ibid s 4.

20 Ibid s 5.

UPDATE

1230 Vesting of trust property in diocesan authority

NOTE 4--In definition of 'land' words 'nor an undivided share in land' repealed: s 1; Trusts of Land and Appointment of Trustees Act 1996 Sch 4.

TEXT AND NOTES 5-20--References to Charity Commissioners are now to Charity Commission: Incumbents and Churchwardens (Trusts) Measure 1964 ss 2(3), 3(6), 5, Schedule (amended by the Charities Act 2006 Sch 8 paras 41-45).

NOTE 5--Charities Act 1960 s 45(3) now Charities Act 1993 s 96(3). In definition of 'permanent trusts' for words 'Charities Act 1960 s 45(3)' read 'Charities Act 1993 s 96(3)'; 1993 Act Sch 6 para 7; see CHARITIES vol 8 (2010) PARA 256.

NOTE 6--Reference to endowments of benefice repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1231. Church Commissioners' funds generally.

(9) FUNDS AND INCOME

(i) Church Commissioners' Funds

1231. Church Commissioners' funds generally.

The establishment of the corporations of Queen Anne's Bounty and the Ecclesiastical Commissioners, their respective constitutions and functions, the dissolution of both these bodies and the transfer of their functions, rights, privileges and property to the Church Commissioners have already been described¹. In order to appreciate what funds are vested in the Church Commissioners it is necessary to ascertain what funds and property were formerly vested in the two dissolved corporations.

¹ See PARAS 361-363 ante.

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1232. Funds of Queen Anne's Bounty.

1232. Funds of Queen Anne's Bounty.

It was to the corporation known as Queen Anne's Bounty that Queen Anne's Bounty that Queen Anne granted all her revenue of first fruits and tenths¹ which had become payable to the Crown after payment of them to Rome had been prohibited by statute². In the great majority of cases these or the sums payable in lieu of them ceased to be payable after 1926, and even where they survived provision was made for their voluntary redemption and consequent extinguishment³. In the rare cases where first fruits and tenths continue to be payable they are payable to the Church Commissioners as successors to Queen Anne's Bounty.

In addition Queen Anne's Bounty formerly received such portion of the profits of a benefice sequestered for non-residence as the bishop might order to be paid to them for the Bounty⁴. Again, purchase money arising from any sale under the provisions of the Parsonages Measure 1938 was formerly payable to Queen Anne's Bounty, whose treasurer could give a good receipt for it⁵.

1 See PARAS 361, 1223 ante.

2 See 26 Hen. 8 c. 3 (1534) (First Fruits and Tenths) (repealed), and PARA 1223 ante.

3 See PARAS 361, 1223 ante.

4 Pluralities Act 1838, s 54: see PARA 697 ante.

5 See the Parsonages Measure 1938, s 1 (5) (as amended), and PARA 1162 ante.

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1233. Funds and properties formerly vested in the Ecclesiastical Commissioners.

1233. Funds and properties formerly vested in the Ecclesiastical Commissioners.

The Ecclesiastical Commissioners were in their corporate capacity empowered to hold a large amount of the revenues of the Church of England as one common fund¹, and to apply the same by scheme ratified in the usual manner for such purposes as they thought fit to propose².

The estates of all sees³ and all endowments and other property belonging to or held in trust for the see or the bishop, including the episcopal houses of residence⁴, suspended canonries⁵, suspended deaneries⁶, and of all subdeaneries, chancellorships, vice-chancellorships, treasurerships, provostships, succentorships, non-residentiary prebends⁶ and sinecure rectories⁷, and the separate estates of non-suspended canonries and deaneries⁸ became vested by statute in the Ecclesiastical Commissioners⁹, and the Cathedral Commissioners¹⁰ made schemes for the compulsory transfer to the Ecclesiastical Commissioners of certain parts¹¹ of the estates of all vicars choral, priest vicars, senior vicars, custos and vicars warden, vicars or minor canons and other subordinate officers performing duties in cathedral churches except Christ Church, Oxford¹², and of all land forming part of the endowment of any cathedral church except Christ Church, Oxford¹², and Manchester Cathedral¹³, or forming part of the property of any deanery, canonry, prebend, archdeaconry or office in such a church¹⁴; and the Ecclesiastical Commissioners could, with the consent of the appropriate corporation and its visitor, make schemes for the transfer to themselves of the rest of the property¹⁵ of the dean and chapter¹⁶ of the church and of the deaneries and other offices¹⁷. These transfers were made subject, in the case of the estates of sees, deans and chapters, non-suspended canonries and deaneries, prebends and archdeaconries, to various provisions for the consideration to be paid and for the re-assignment or transfer of part of the property as endowments¹⁸.

The money and revenues payable to the Ecclesiastical Commissioners and carried over to the common fund included the rents and profits of land and other hereditaments vested in them¹⁹, the episcopal fund²⁰, any increase of income of ecclesiastical corporations resulting from sales, enfranchisements, exchanges, purchases or investment²¹, £1 million the produce of sales effected under the New Parishes Act 1843²², and contributions by bishops towards episcopal provisions²³.

1 The balance of the common fund of the Ecclesiastical Commissioners and the corporate fund of Queen Anne's Bounty were transferred on 1st April 1948 to the general fund of the Church Commissioners: Church Commissioners Measure 1947, s 10 (4). References in any Act or Measure to either the common or the corporate fund are to be construed as references to the general fund of the Church Commissioners: s 18 (2).

2 The common fund was created by the Ecclesiastical Commissioners Act 1840, s 67.

3 Episcopal residences and rights of patronage or presentation were formerly exempt: Ecclesiastical Commissioners Act 1860, s 2 (repealed).

4 Episcopal Endowments and Stipends Measure 1943, ss 1-3.

5 Ecclesiastical Commissioners Act 1840, s 49 (repealed).

6 Rights of patronage were exempt: *ibid* s 51 (repealed). Certain of the estates could be vested in the appropriate chapters: ss 49, 52 (both repealed).

7 *Ibid* s 54.

8 *Ibid* s 50 (repealed).

9 The commissioners had all legal powers of enforcing payment of all profits and emoluments due to them: *ibid* s 57.

10 The Cathedral Commissioners were established under the Cathedrals Measure 1931, s 1, Sch. 1 (repealed): see PARA 612 note 3 ante.

11 *Ibid* s 13 (repealed). Some of the property vested in the appropriate chapter: s 13 (repealed).

12 *Ibid* s 29.

13 *Ibid* s 12 (3) (repealed).

14 *Ibid* s 12 (repealed).

15 The cathedral and collegiate church and ecclesiastical, educational or other like patronage were exempt: Ecclesiastical Commission Act 1868, s 3 (repealed).

16 *Ibid* s 3 (repealed).

17 *Ibid* ss 13 (repealed), 14.

18 Ecclesiastical Commissioners Act 1860, ss 2, 3, 5 (all repealed); Ecclesiastical Commission Act 1868, ss 3, 13 (both repealed); Cathedrals Measure 1931, s 12 (repealed).

19 Ecclesiastical Commissioners Act 1840, s 67.

20 Ecclesiastical Commissioners Act 1850, s 15 (repealed).

21 Episcopal and Capitular Estates Act 1851, s 8 (repealed); Episcopal and Capitular Estates Act 1854, s 6 (repealed).

22 See the Ecclesiastical Commissioners Act 1875, s 1 (repealed).

23 See the Episcopal Pensions Measure 1926, s 4 (repealed); and the Episcopal Pensions Measure 1945, s 3 (repealed).

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1233 Funds and properties formerly vested in the Ecclesiastical Commissioners

NOTE 2--1840 Act s 67 amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

TEXT AND NOTES 15-17--1868 Act repealed: Church of England (Miscellaneous Provisions) Measure 1992 Sch 4 Pt I.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1234. The Church Commissioners' general fund.

1234. The Church Commissioners' general fund.

As from their establishment on 1st April 1948¹ the Church Commissioners have kept a general fund to which were transferred any balances on income account from the common fund of the Ecclesiastical Commissioners and from the corporate fund of Queen Anne's Bounty². All income received in respect of property and funds held by the commissioners is carried to the general fund³ and all outgoings paid from it, the balance being available for any purpose for which any surplus of the common fund of the Ecclesiastical Commissioners or the corporate fund of Queen Anne's Bounty would have been available⁴.

1 Ie the appointed day under the Church Commissioners Measure 1947: see PARA 363 ante.

2 Ibid s 10 (4).

3 Ibid s 10 (6). As to trust funds, see PARA 376 note 3 ante.

4 Ibid s 10 (6). See further PARA 376 ante.

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1234 The Church Commissioner's general fund

TEXT AND NOTES--As to the duty of the Church Commissioners to make payments out of the General Fund for distribution by the Archbishops' Council see PARA 427B.

TEXT AND NOTES 3, 4--1947 Measure s 10(6) amended: Pensions Measure 1997 s 10, Sch 1 para 3. See PARA 374.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1235. Diocesan stipends funds.

1235. Diocesan stipends funds.

In every diocese within which a reorganisation scheme¹ had come into force, a diocesan stipends fund was opened and kept by the Ecclesiastical Commissioners, into which were paid all money directed by any scheme to be so paid and any donations, legacies and other contributions which might from time to time be received for the credit of or be allocated by the bishop or the diocesan board of finance to that fund². While not all dioceses were affected by reorganisation schemes all were to some extent affected by the need for general pastoral reorganisation and accordingly the Church Commissioners were to open a diocesan stipend fund for every diocese for which such a fund had not been established, into which should be paid all money directed so to be paid by any scheme or order as respects pastoral reorganisation, and any donations, legacies or other contributions from time to time received for the credit of, or allocated to, that fund³. The power to make such schemes and orders has been repealed⁴.

On 1st April 1953⁵ the Church Commissioners opened and now keep two accounts for each diocesan stipends fund, namely a capital account and an income account, and allocated to each all money and other properties then held by them on behalf of the fund in such proportions as they determined after consultation with the bishop and the diocesan board of finance⁶. Provision was also made for the future allocation between the capital and income accounts of payments, legacies, donations, contributions and other money or property received for the credit of the fund⁷. Money or other property allocated to either account is not in fact credited direct to that account, but is taken over and held by the commissioners as part of their general fund, the accounts themselves being credited with a sum charged upon their general fund of an amount equal in value to the money or property taken over⁸. Subject to any charges imposed on it, money standing to the credit of the capital account may be appropriated as an endowment fund for any benefice within the diocese or as an augmentation of any such endowment fund⁹. Subject also to any charges on it, money standing to the credit of the income account is applied in providing or augmenting stipends or other emoluments of incumbents, or other persons declared by the bishop to be engaged in the cure of souls within the diocese¹⁰. The diocesan board of finance is entitled to be furnished with the annual accounts of the capital and income accounts¹¹.

The Church Commissioners have been given power to divide the tithe maintenance fund¹², and to transfer three-fifths of it to the capital account of the diocesan stipends fund and hold the remainder as part of the capital of their general fund¹³.

There are provisions for the making of pastoral schemes¹⁴ whereunder endowments of benefices are transferred to diocesan stipends funds and those funds are charged with the payment of stipends and remuneration¹⁵.

1 Ie a scheme made under the Reorganisation Areas Measure 1944 (repealed).

2 Ibid s 30 (1) (repealed).

3 Pastoral Reorganisation Measure 1949, s 11 (1) (repealed).

4 See the Pastoral Measure 1968, s 95, Sch. 9.

5 Ie the appointed day under the Diocesan Stipends Funds Measure 1953: see s 8 (1).

- 6 Ibid s 1.
- 7 Ibid s 2.
- 8 Ibid s 3.
- 9 Ibid s 4.
- 10 Ibid s 5: see PARA 1239 post.
- 11 Ibid s 7.
- 12 Ie the common fund established under the Tithe Act 1936, s 38, Sch. 8 para 1: see PARA 1215 ante.
- 13 Church Property (Miscellaneous Provisions) Measure 1960, s 16 (1). Upon the transfer, the payments required to be made under the Tithe Act 1936, Sch. 8 para 1, to persons entitled to receive the emoluments of benefices are to be a charge on the income account of the diocesan stipends fund, and if the income of the fund is insufficient the difference must be paid out of the commissioners' general fund: Church Property (Miscellaneous Provisions) Measure 1960, s 16 (2).
- 14 Certain matters may also be dealt with under a pastoral order: see the Pastoral Measure 1968, s 38 (1), and PARA 875 ante. As to pastoral schemes and orders, see PARAS 856, et seq, ante.
- 15 See ibid s 33, and PARAS 874, 875 ante. See also Sch. 3 para 10 (1), and PARA 886 ante.

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1235 Diocesan stipends funds

TEXT AND NOTE 6--The duties of the Church Commissioners to keep two accounts for the diocesan stipends fund of a diocese are transferred to the diocesan board of finance of the diocese: Church of England (Miscellaneous Provisions) Measure 2000 s 1. 1953 Measure s 1 substituted accordingly: Church of England (Miscellaneous Provisions) Measure 2000 Sch 2 para 2.

NOTE 7--Amended: Endowments and Glebe Measure 1976 s 35(1), Sch 8; Church of England (Miscellaneous Provisions) Measure 2000 Sch 2 para 3, Sch 8 Pt I.

TEXT AND NOTE 8--Repealed: ibid Sch 8 Pt I.

TEXT AND NOTE 9--Authorised applications now additionally include the acquisition of any land to be held as diocesan glebe land of the diocese by the board or any subsidiary of the board set up under a scheme made under the Endowments and Glebe Measure 1976 s 19 or investment in any such subsidiary; the development of such land; the discharge of expenses or of a loan; participation in collective investment schemes; investment in certain investment funds; or in exercise of powers as a trustee: 1953 Measure s 4 (substituted by the Endowments and Glebe Measure 1976 s 35(2); and amended by the Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 6; the National Institutions Measure 1998 Sch 5 para 1; the Church of

England (Miscellaneous Provisions) Measure 2000 Sch 2 para 4; and the Church of England (Miscellaneous Provisions) Measure 2006 s 3(2), Sch 6).

The proceeds of, or the capital money arising from, any sale, exchange or other dealing with investments or deposits made by a diocesan board of finance under the 1953 Measure s 4(1), less the costs, charges and expenses directly attributable to the transaction in question, and all dividends or other payments in the nature of income received by such a board in respect of the investment of any moneys standing to the credit of the capital account of the diocesan stipends fund, must be paid to the commissioners, and the commissioners must allocate sums so paid to the capital account or, as the case may be, the income account of that fund: 1976 Measure s 35A(1), (2) (added by the 1998 Measure Sch 5 para 4; and amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 5 para 10).

TEXT AND NOTE 11--1953 Measure s 7 repealed: Church of England (Miscellaneous Provisions) Measure 2005 s 3.

TEXT AND NOTE 13--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

NOTE 14--Now Pastoral Measure 1983 s 37(1)(k), (l) (as renumbered by the Team and Group Ministries Measure 1995 s 5).

NOTE 15--Now 1983 Measure s 33.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1236. Diocesan pastoral accounts.

1236. Diocesan pastoral accounts.

On 1st April 1969¹ the Church Commissioners came under a duty to open and hold an account for each diocese, called the diocesan pastoral account².

Expenses incurred by or on behalf of, or under the authority or direction of, the bishop³ of any diocese or any pastoral committee⁴ or any diocesan redundant churches uses committee⁵ or the Church Commissioners for the purposes of the Pastoral Measure 1968 or any scheme or order made under it⁶, except any part of the salaries or wages of persons in the regular employment of the bishop, any diocesan board or committee or the commissioners, may be paid out of the money standing to the credit of such one or more of the diocesan pastoral accounts as the commissioners may determine⁷. The commissioners may repay out of such an account any money expended by them or by a diocesan board of finance⁸ on any property vested by or under that Measure⁹ in the commissioners or the board, as the case may be, for the purpose of furthering the disposal or use of the property¹⁰.

Where it appears to the commissioners that any money standing to the credit of a diocesan pastoral account is not required or likely to be required for meeting the afore-said expenses or expenditure they may, at the request of the diocesan board of finance, (1) apply that money by way of grant or loan to the provision, restoration, improvement or repair of churches¹¹ and parsonage houses¹² in the diocese, including the repair of any redundant building¹³ vested in the board pending the making of a redundancy scheme¹⁴, or to other purposes of the diocese or any benefice¹⁵ or parish¹⁶ in the diocese¹⁷; or (2) apply that money by way of grant or loan for the benefit of another diocese, either generally or for such of those purposes as the board may specify¹⁸; or (3) transfer that money to the capital or income account of the diocesan stipends fund¹⁹.

If at any time there is not a sufficient amount standing to the credit of a diocesan pastoral account to meet any such expenses or expenditure, the commissioners may make an advance out of their general fund²⁰ towards such expenses or expenditure and may at any time transfer from that diocesan pastoral account into their general fund the amount of that advance²¹.

1 le the date of the commencement of the Pastoral Measure 1968: see s 96 (3), and the London Gazette dated 7th February 1969.

2 Pastoral Measure 1968, s 77 (1). The commissioners also came under a duty to transfer to the diocesan pastoral account (1) the amounts standing to the credit or debit of the diocese in the expenses fund set up under the Union of Benefices Measure 1923, s 32 (repealed), and the diocesan reorganisation fund set up under the Reorganisation Areas Measure 1944, s 33 (repealed); (2) a share, determined by the commissioners to be fair and reasonable, of the money standing to the credit of the general reorganisation fund set up under s 33 (repealed) and the fund set up under the Union of Benefices Act 1860, s 22 (repealed); and (3) any money payable to the account under the provisions of the Pastoral Measure 1968 or any scheme or order made under it: s 77 (1) (a)-(c). The foregoing funds have been closed, and money which would have been paid into the fund is treated and applied as money standing to the credit of the fund: s 77 (2) (a). Money which would have been payable out of the fund is payable out of the appropriate diocesan pastoral account: s 77 (2) (b). Money which would have been payable by the diocesan board of finance to the Church Commissioners under the Reorganisation Areas Measure 1944, s 31 (1) (repealed), must be credited to the diocesan pastoral account of the diocese concerned: Pastoral Measure 1968, s 77 (3). Where by virtue of that Measure or any pastoral scheme or order any money is required to be appropriated or credited to a diocesan pastoral account the money must be taken over and held by the commissioners as part of their corporate property, and they must credit the account with an equivalent amount charged upon their general fund: Sch. 3 para 10 (1).

3 For the meaning of 'bishop', see PARA 813 note 3 ante.

- 4 As to pastoral committees, see PARA 521 ante.
- 5 As to diocesan redundant churches uses committees, see PARA 1136 ante.
- 6 As to pastoral schemes and orders, see PARA 856 et seq ante.
- 7 Pastoral Measure 1968, s 78 (1).
- 8 As to the diocesan board of finance, see PARAS 517, 518 ante.
- 9 As to the vesting of property, see the Pastoral Measure 1968, s 59, and PARA 1125 ante.
- 10 Ibid s 78 (2).
- 11 For the meaning of 'church', see PARA 865 note 1 ante.
- 12 For the meaning of 'parsonage house', see PARA 814 note 5 ante.
- 13 As to redundant buildings, see the Pastoral Measure 1968, s 28, and PARA 1119 ante.
- 14 As to the interim vesting of property pending a redundancy scheme, see ibid s 49 (1), and PARA 1121 ante.
- 15 For the meaning of 'benefice', see ibid s 89 (1), and PARA 768 note 1 ante.
- 16 For the meaning of 'parish', see ibid s 89 (1), and PARA 534 ante.
- 17 Ibid s 78 (3) (a).
- 18 Ibid s 78 (3) (b).
- 19 Ibid s 78 (3) (c). As to diocesan stipends funds, see PARA 1235 ante.
- 20 As to the commissioners' general fund, see PARA 1234 ante.
- 21 Pastoral Measure 1968, s 78 (4).

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1236 Diocesan pastoral accounts

TEXT AND NOTES--Consolidated in Pastoral Measure 1983 ss 77(1), 78.

Every diocesan board of finance must as soon as practicable after the end of each financial year of the board prepare an account of the money paid into or out of the diocesan pastoral account during that year and must include in it a statement of the amount by which the diocesan pastoral account was in debit or credit, as the case may be, at the beginning and end of that year: s 77(3). Every diocesan board of finance must lay a copy of the account prepared before the diocesan synod: s 77(4) (substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 21).

TEXT AND NOTE 2--The duty of the Church Commissioners to hold a diocesan pastoral account under the 1983 Measure s 77 is transferred to the diocesan board of finance of the diocese: Church of England (Miscellaneous Provisions) Measure 2000 s 1(b).

NOTE 2--The diocesan board of finance for the diocese is now under a duty to transfer to the diocesan pastoral account (1) any money payable to the account under any provisions of the 1983 Measure or any scheme or order made under it; (2) such other money as the bishop and the diocesan board of finance for the diocese determine should be credited to that account not being money for the application or disposal of which provision is made by or under any other enactment: 1983 Measure s 77(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 5(a); and Church of England (Miscellaneous Provisions) Measure 2006 Sch 4 para 6). 1968 Measure s 77(2) not reproduced. 1968 Measure Sch 3 para 10(1) now 1983 Measure Sch 3 para 10 (amended by the Pastoral (Amendment) Measure 1994 s 12), under which the commissioners must allow interest at such rate as they may determine on all sums credited to a diocesan pastoral account or the redundant churches temporary maintenance account.

TEXT AND NOTE 7--Now such expenses must be paid out of the money standing to the credit of the diocesan pastoral account: 1983 Measure s 78(1) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 6(a)). Where such expenses are incurred in respect of more than one diocese the commissioners must, after consultation with the diocesan board of finance of each diocese concerned, determine the proportions in which the expenses are to be borne by each: 1983 Measure s 78(1A) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 6(b)).

NOTE 9--See now 1983 Measure s 59 (amended by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 18).

TEXT AND NOTE 10--Now the commissioners or the diocesan board of finance, as the case may be, are entitled to be repaid out of the diocesan pastoral account any money expended by them or the board on any property vested by or under the 1983 Measure in the commissioners or the board, as the case may be, for this purpose: s 78(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 6(c)).

NOTES 13-16--See now 1983 Measure ss 28, 49(1), 86(1).

TEXT AND NOTES 17-19--Now where the diocesan board of finance is satisfied that any moneys standing to the credit of a diocesan pastoral account are not required or likely to be required for meeting the expenses or expenditure referred to in *ibid* s 78(1), (2) it may, take step (1), (2) or (3): s 78(3) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 6(d)). In step (1), for 'making of a redundancy scheme' read 'coming into operation of arrangements under a redundancy scheme': 1983 Measure s 78(3) (amended by the Pastoral (Amendment) Measure 1994 s 9). The diocesan board of finance may also transfer those moneys to one or more other accounts or funds held by the board or apply or transfer them partly to such other accounts or funds and partly as provided in the 1983 Measure s 78(3)(a)-(c): s 78(3)(d) (added by the Dioceses, Pastoral and Mission Measure 2007 Sch 5 para 16).

The commissioners must hold a redundant churches temporary maintenance account and must transfer into it any moneys which are payable to the account under the 1983 Measure s 52 (see PARA 1123): s 78A(1) (added by the 1994 Measure s 10). Any money transferred under the 1983 Measure s 78A(1) must be held by the commissioners as part of their corporate property and the commissioners must credit the redundant churches temporary maintenance account with an equivalent amount charged on their general fund and must allow interest at such rate as they may determine on all sums

credited to that account: s 78A(1A) (added by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 7). The commissioners may apply money standing to the credit of the redundant churches temporary maintenance account by way of grant or loan to the care, insurance, repair and maintenance of any redundant building vested in (a) the commissioners or a diocesan board of finance pending or making of the coming into operation of arrangements under a redundancy scheme; (b) a diocesan board of finance pending or making of the coming into operation of arrangements under a new or amended redundancy scheme; (c) the commissioners or a diocesan board of finance pending or making of the coming into operation of arrangements under a pastoral scheme: 1983 Measure s 78A(2) (added by the 1994 Measure s 10; and amended by the National Institutions Measure 1998 Sch 5 para 5; and the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 22).

TEXT AND NOTE 21--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 6 para 2, Sch 8 Pt II.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(i) Church Commissioners' Funds/1237. Power to enforce payment.

1237. Power to enforce payment.

For the purpose of enforcing payment of all profits and emoluments to be paid to the Church Commissioners and of obtaining possession of all land, tithes or other hereditaments vested in or accruing to them, and of recovering the rents and profits of them, the commissioners have all the legal and equitable rights, powers and remedies otherwise exercisable by the holder of the deanery, canonry, prebend, dignity or office, or the rector of the rectory, in respect to the property affected¹.

¹ Ecclesiastical Commissioners Act 1840, s 57; Church Commissioners Measure 1947, ss 2, 18 (2).

UPDATE

1231-1237 Church Commissioners' Funds

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1238. Quarterly payments to incumbents.

(ii) Church Commissioners' Functions

1238. Quarterly payments to incumbents.

The net income¹ payable to an incumbent or other person entitled to receive the emoluments of a benefice² is payable by the Church Commissioners by equal quarterly payments on 1st January, 1st April, 1st July and 1st October in each year³, less, in certain cases, a small deduction to meet the cost of the system⁴. The initial estimate of the net income made by Queen Anne's Bounty in 1937 is subject to an annual review on or before 1st April in respect of the year next ensuing and any necessary revision⁵; there is also a general power to revise and adjust quarterly payments at any time as circumstances may require⁶.

In respect of such part of the benefice income as was formerly payable by the Ecclesiastical Commissioners to an incumbent or other person from time to time entitled to receive it, the Church Commissioners may submit schemes for confirmation to Her Majesty in Council providing for such income to be paid by four quarterly instalments on convenient quarterly days, each instalment being as nearly as practicable equivalent to a quarter of the whole net amount of the income after providing for deductions or outgoings⁷. Schemes may provide for a date of commencement, the manner of computing the gross amount of the income and the deductions or outgoings to be brought into account, the time and manner of making adjustments, apportionment on a change of incumbency, accounts, exclusion of certain income if desirable and other necessary matters⁸. The commissioners have power to prepare and submit supplementary or other schemes for remedying defects or supplying omissions in any existing schemes, for making alterations or additions to such an existing scheme or for substituting a new one⁹. Orders in Council confirming any such schemes are published in the London Gazette, and as soon as it is gazetted an order and the provisions of a scheme have full force and effect¹⁰.

1 As to the method of calculating the net income, see the Queen Anne's Bounty (Powers) Measure 1937, s 2 (2), Schedule; Statute Law Revision Act 1964; see also the Queen Anne's Bounty (Powers) Measure 1939, s 5.

2 Queen Anne's Bounty (Powers) Measure 1937, ss 1 (i), 2 (1). The inaugural payment was made by Queen Anne's Bounty as directed by s 4.

3 Ibid s 3; Church Commissioners Measure 1947, ss 2, 18 (2). The commissioners act as successors to Queen Anne's Bounty: see PARAS 361, 363 ante.

4 Queen Anne's Bounty (Powers) Measure 1937, s 7, under which, in the case of every benefice the net annual value of which exceeds £350, there may be deducted from each quarterly payment a sum not exceeding 0.5 per cent of the amount of the quarterly payment.

5 Ibid s 5 (2).

6 See ibid s 6.

7 Ecclesiastical Commissioners (Powers) Measure 1938, s 7 (1), (2); Church Commissioners Measure 1947, ss 2, 18 (2). The Church Commissioners act as successors to the Ecclesiastical Commissioners: see PARAS 362, 363 ante. The Church Commissioners may pay any net income payable by them to an incumbent in four quarterly instalments on 1st January, 1st April, 1st July and 1st October: see the Church Property (Miscellaneous Provisions) Measure 1960, s 17, and PARA 1247 post.

8 See the Ecclesiastical Commissioners (Powers) Measure 1938, s 7 (3).

9 Ibid s 7 (4).

10 Ibid s 10.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1238 Quarterly payments to incumbents

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1239. Application of augmentation money etc.

1239. Application of augmentation money etc.

The Church Commissioners¹ have power to apply money or securities in their hands appropriated for the augmentation of a benefice² in or towards (1) the division of the residence house of the benefice into two or more parts³, in which event the diocesan bishop has power to declare one part to be the residence house of the benefice⁴; (2) improvements to the residence house and any cottage and outbuildings belonging to it, including drainage and water, gas and electricity supply⁵; (3) building, rebuilding, constructing or improving any house, cottage or other buildings on land belonging to the benefice, including drainage and water, gas and electricity supply⁶; (4) making up roads and footpaths adjoining any property belonging to the benefice and improvements to the drive, paths and gardens of the residence house⁷; (5) redemption of fee farm rents, quit rents and other fixed annual charges and annuities arising under the Tithe Act 1936⁸ charged on the property⁹; and (6) compounding of liability for the repair of a chancel for which they are liable by reason of tithe rentcharge having been vested in them for the benefice before 1936¹⁰.

The commissioners also have power, with the consent of each incumbent and of the diocesan bishop¹¹, to extinguish any permanent charge upon the whole or any part of the revenues of a benefice in favour of another benefice, by transferring from the benefice charged to the benefice entitled to the charge such part of the money or securities appropriated or held by them for the augmentation of the benefice charged as will produce an annual income equal at the date of transfer to the annual amount of the charge¹².

Subject to any charges on the income of the diocesan stipends fund¹³ by any enactment or scheme, money standing to the income account of the fund is to be applied¹⁴ in providing or augmenting the stipends or other emoluments of incumbents or assistant curates licensed under seal or other persons who are declared by the bishop to be engaged in the cure of souls within the diocese¹⁵.

1 The commissioners act as successors to Queen Anne's Bounty: see PARAS 361, 363 ante.

2 For the meaning of 'benefice', see the Queen Anne's Bounty (Powers) Measure 1939, s 7, and PARA 768 note 1 ante.

3 Ibid s 1 (i).

4 Ibid s 1 proviso (a).

5 Ibid s 1 (ii).

6 Ibid s 1 (iii).

7 Ibid s 1 (iv).

8 See PARA 1219 ante.

9 Queen Anne's Bounty (Powers) Measure 1939, s 1 (v).

10 Ibid s 1 (vii); Church Commissioners Measure 1947, ss 2, 18 (2). The provision for reference of the sum to be paid for compounding the commissioners' liability under the Ecclesiastical Dilapidations Measure 1923, s 52 (3) (see PARA 1101 ante), does not apply: Queen Anne's Bounty (Powers) Measure 1939, s 1. proviso (b).

- 11 The bishop may delegate his functions if he is ill or absent from his diocese: Pastoral Measure 1968, s 85 (1), (2) (f).
- 12 Queen Anne's Bounty (Powers) Measure 1939, s 4.
- 13 As to the diocesan stipends fund, see PARA 1235 ante.
- 14 The application must be made in accordance with directions from time to time given with the concurrence of the diocesan board of finance (as to which see PARAS 517, 518 ante) by the bishop or some person authorised by him: Diocesan Stipends Funds Measure 1953, s 5 (2).
- 15 Ibid s 5 (1).

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1239 Application of augmentation money etc

TEXT AND NOTES 1-12--Repealed: Endowments and Glebe Measure 1976 Sch 8.

TEXT AND NOTES 14, 15--1953 Measure s 5 now as substituted by the Endowments and Glebe Measure 1976 s 9; and amended by the Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 7; the National Institutions Measure 1998 Sch 5 para 1; and the Church of England (Miscellaneous Provisions) Measure 2006 s 3(3), Sch 6). The money is also to be applied in defraying sequestrators' expenses; meeting expenses incurred in repairing and maintaining parsonage houses; and paying contributions under the Social Security Contributions and Benefits Act 1992 in respect of ministers not employed under a contract of service: 1953 Measure s 5(1) (as so substituted and amended).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1240. Stabilisation of endowments.

1240. Stabilisation of endowments.

With a view to stabilising the income derived by benefices from certain endowments (known as transferable endowments) the Church Commissioners are empowered to make under their seal a stabilisation order in respect of these endowments or any part of them¹, specifying the benefice affected and the endowments to which it relates and the date on which the order is to take effect². Transferable endowments comprise (1) any securities held by the commissioners at the date on which the order takes effect for the benefit of the benefice otherwise than on special trusts³; (2) any annuity or instalment of any annuity payable to the commissioners under the Tithe Acts 1918 to 1936⁴ or any Act amending or extending them after the date on which the order has effect in respect of the redemption of any rentcharge, corn rents or other payments in lieu of tithe forming part of the endowments of the benefice⁵; and (3) any accumulated sinking fund held by the commissioners under the Tithe Act 1918⁶ at the date on which the order has effect which is attributable to the redemption of any such rentcharges, corn rents or payments⁷.

When such an order takes effect the endowments specified in it are held by the commissioners as part of their general fund free from any trust in favour of the benefice⁸; in exchange, the commissioners appropriate to the benefice a sum of money⁹ and their general fund stands charged with the payment to the benefice of an annual sum¹⁰.

1 Benefices (Stabilization of Incomes) Measure 1951, s 1 (1), (2) (a).

2 Ibid s 1 (2) (b), (c).

3 Ibid s 2 (a).

4 I.e. the Tithe Act 1918, the Tithe Act 1925 and the Tithe Act 1936. The Acts of 1918 and 1925 are, for the most part, prospectively repealed on the coming into operation of a scheme under the Corn Rents Act 1963: see s 3 (4), Schedule, and PARA 1222 ante. As to annuities and instalments payable, see PARA 1217 ante.

5 Benefices (Stabilization of Incomes) Measure 1951, s 2 (b).

6 See note 4 supra.

7 Benefices (Stabilization of Incomes) Measure 1951, s 2 (c).

8 Ibid s 3 (a).

9 Ibid s 3 (b). For the mode of calculating this sum, see Schedule, Part I.

10 Ibid s 3 (c). For the mode of calculating this annual sum, see Schedule, Part II.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional

provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13 (para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1240A. Payments towards stipends.

1240A. Payments towards stipends.

Where immediately before 1 April 1978 a benefice has endowment income the general fund of the Church Commissioners stands charged as from that day with the payment of an annuity towards the incumbent's stipend¹. This is called the guaranteed annuity². It is not payable during a vacancy³. The amount is either the amount of the net endowment income immediately before that day or £1,000, whichever is the less⁴. Special provisions apply where a new benefice is created by the union of two or more under a pastoral scheme coming into operation on or after the above day⁵.

However, no guaranteed annuity is payable by the Commissioners in respect of any benefice towards the stipend of the incumbent of that benefice after the cessation date⁶ or, if the benefice is vacant on 1 July 2005, after that date⁷. The Commissioners must serve a written notice on the incumbent of each benefice, except any benefice which is vacant on that date, in respect of which a guaranteed annuity is payable, informing the incumbent of the cessation of the guaranteed annuity⁸.

Where the guaranteed annuity is £1,000 and the net endowment income of the benefice immediately before 1 April 1978 exceeds that sum, the person who immediately before that day is the incumbent is entitled, so long as he continues in that office, to receive from the commissioners an annual personal grant equal to the excess⁹.

What constitutes the endowments or endowment income of a benefice, or is the amount of the net annual endowment income immediately before 1 April 1978, or is the amount of the endowment income of an archdeacon immediately before that day is to be conclusively determined by the commissioners¹⁰.

The Church Commissioners may make schemes providing for property held by them under certain private or local Acts on certain trusts to be held as part of their corporate property freed from those trusts and for property vested in others under such Acts on certain trusts to vest in them freed from the trusts¹¹.

¹ Endowments and Glebe Measure 1976 s 1(1). All provisions of the Measure not in force on its passing came into force on 1 April 1978: Order of the Church Commissioners dated 11 August 1977.

² Ibid s 1(5).

³ Ibid s 1(6).

⁴ Ibid s 1(2). Where on or after 1 April 1978 two or more benefices are held in plurality they are treated as constituting one benefice and accordingly the guaranteed annuity is either the aggregate of the guaranteed annuities in respect of those benefices or £1,000, whichever is the less: s 3(1).

As to payment see s 5.

⁵ If, where the scheme comes into operation on 1 April 1978 an annuity would otherwise have been payable in respect of any of the benefices or, in the case of any other scheme, an annuity was immediately before it came into operation payable in respect of any of the benefices, the commissioners' general fund stands charged as from the day on which the scheme comes into operation with the payment towards the stipend of the incumbent of the new benefice of an annuity of an amount which is either the aggregate of the annuities which would have been or were payable in respect of the benefices or £1,000, whichever is the less: Endowments and Glebe Measure 1976 s 1(3), (4). As to payment see s 5.

6 le the date specified in the notice served under the Stipends (Cessation of Special Payments) Measure 2005 s 1(2) or, where the Commissioners allow a later date under s 1(3), that date: s 4(1).

7 Ibid s 1(1).

8 Ibid s 1(2). In their notice the Commissioners must state that the incumbent has the right, not later than the date specified in the notice, to notify the Commissioners in writing that he wishes the guaranteed annuity to continue to be paid: s 1(2). If the Commissioners are so notified, the guaranteed annuity is to continue to be payable to the incumbent as long as he remains in office: s 1(3). However, the incumbent may at any time notify the Commissioners in writing that he no longer wishes to receive the guaranteed annuity: see s 1(4). Sections 1(1) and (2) have no effect in relation to an incumbent to whom, on 1 July 2005, a guaranteed annuity and an annual personal grant are payable and, in such a case (notwithstanding anything in the Endowments and Glebe Measure 1976 s 1), the guaranteed annuity continues to be payable only so long as that incumbent remains in office: 2005 Measure s 1(5). An annual personal grant is a grant payable under the 1976 Measure s 2: 2005 Measure s 4(1). The Commissioners must pay the sums which would have been paid by way of the guaranteed annuities to the Archbishops' Council, and the Council must to pass on those payments to the income accounts of the diocesan stipends funds for allocation amongst the dioceses: see s 3.

9 Endowments and Glebe Measure 1976 s 2(1). Where by means of a pastoral scheme coming into operation on or after the appointed day a new benefice is created by the union of two or more, and the person who becomes the incumbent of the new benefice was immediately before the scheme comes into operation the incumbent of any of the constituent benefices, and that person, as incumbent, would have been or was entitled to an annual personal grant under s 2(1), he is entitled to an annual personal grant of the same amount so long as he holds the office of incumbent of the new benefice: s 2(2).

Where immediately before 1 April 1978 two or more benefices are held in plurality s 2(1) applies in relation to the incumbent as if those benefices constituted one benefice, the guaranteed annuity payable towards the stipend of the incumbent of those benefices were the guaranteed annuity in respect of that one benefice, and the aggregate of the net annual endowment incomes of those benefices were the net annual endowment income of that one benefice: s 3(2). If he resigns one or more but not all of the benefices or one or more but not all is declared vacant he is entitled, so long as he continues to be the incumbent of the other benefice or benefices retained, to receive an annual personal grant of an amount determined by the commissioners after consulting the bishop: s 3(3); Church of England (Miscellaneous Provisions) Measure 1978 s 11.

As to payment see 1976 Measure s 5.

10 Endowments and Glebe Measure 1976 s 7(1), (8). Certain property and income are specifically excluded by s 7(2)-(7).

11 See *ibid* s 4, Schs 1, 2. However, where on 1 July 2005 such a scheme makes provision for the Commissioners to charge their general fund with annual payments to the income account of any diocesan stipends fund, no such payments may be made after that date: Stipends (Cessation of Special Payments) Measure 2005 s 2(1). The Commissioners must pay the sums which would have been paid as such annual payments to the Archbishops' Council, and the Council must to pass on those payments to the income accounts of the diocesan stipends funds for allocation amongst the dioceses: see s 3.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see *PARA 427A NOTE 1*), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see *PARA 1240A*) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13

(para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1240B. Extinguishment of charges and trusts.

1240B. Extinguishment of charges and trusts.

Where immediately before 1 April 1978 any property is held by the commissioners on trust to provide or augment the stipend or other emoluments of any one or more of the following persons the property is held from that day as part of their corporate property discharged from the trust¹. The persons referred to are (i) the incumbent of a benefice, (ii) the holder of an archdeaconry, and (iii) an assistant curate or clerical or lay assistant in a parish². Where any property is held by any other persons on trust for the above purposes the trustees may, with the Charity Commissioners' consent, transfer the property to the Church Commissioners to be held as part of its corporate property discharged from that trust³. Discretionary trusts, etc, are excluded, also property held under certain local or private Acts⁴.

Any rentcharge, tithe or payment in lieu of tithe which immediately before 1 April 1978 is attached to a benefice, and which under any Act or award is directed to be collected by churchwardens or any other person and not by the incumbent, or which arises in so much of any ecclesiastical parish situated partly in the City of London as is situated out of the City, vests on that day in the Church Commissioners for all the interest so attached, discharged from any trust or charge in favour of any benefice or its incumbent and from any liability for chancel repairs but subject to any other charge or liability affecting that interest, and is to be held as part of their corporate property⁵.

Any rentcharge, corn rent, tithe or other payment attached to a benefice which immediately before 1 April 1978 is vested in the Commissioners under the Tithe Act 1925 and Church Commissioners Measure 1947 for all the interest so attached is held by them from that day as part of their corporate property discharged from any trust or charge in favour of any benefice or its incumbent and from any liability for chancel repairs but subject to any other charge or liability affecting that interest⁶.

Provision in certain schemes or orders for the payment of stipends or appropriation of endowments has been revoked⁷.

1 Endowments and Glebe Measure 1976 s 11(1).

2 Ibid s 11(1)(a)-(c).

3 Ibid s 11(2) (amended by Church of England (Miscellaneous Provisions) Measure 2006 Sch 3 para 2).

4 1976 Measure s 11(3), (4), Sch 2.

5 Ibid s 12(1), (2).

6 Ibid s 12(3).

7 Ibid s 13.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie

the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13 (para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1240C. New gifts for endowment of benefice, etc.

1240C. New gifts for endowment of benefice, etc.

Where any property is acquired by the Church Commissioners, or by the incumbent of a benefice in his capacity as such, by way of devise, bequest or gift, and (i) the property is to be held on permanent trusts for the provision or augmentation of the stipend of any person engaged in the care of souls in, or in any part of, the area of a particular benefice or the incumbent's benefice, or (ii) the property consists of any building or land which is to be used for, or for the extension of, a house of residence for any person so engaged, other than an incumbent, the commissioners or incumbent must transfer or convey it to the diocesan board of finance to be held subject to and in accordance with the devise, etc: Endowments and Glebe Measure 1976 s 14; Order of the Church Commissioners dated 11 August 1977; Church of England (Miscellaneous Provisions) Measure 2006 Sch 3 para 3.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13 (para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1241. Receipt and appropriation of money received.

1241. Receipt and appropriation of money received.

All money and other property received on or after 22nd June 1951¹ by the Church Commissioners on behalf of a benefice to be held as endowment capital, otherwise than on special trusts, and subject to the satisfaction or redemption of any mortgage or charge on it, is to be held by the commissioners as part of their general fund free from any trust in favour of the benefice concerned². The commissioners must appropriate to the benefice concerned a sum equal to the money so held by them or in the case of other property a sum appropriated³ in respect of it⁴. The commissioners' general fund stands charged with the payment to the benefice concerned of interest on the sum appropriated at a rate determined by the commissioners⁵.

Sums appropriated to a benefice under a stabilisation order⁶, or in place of money received on behalf of a benefice in pursuance of the foregoing provision⁷, are to be applied and disposed of by the commissioners as money in their hands appropriated for the augmentation of the benefice should by law be applied and disposed of⁸. If at any time any money held for a benefice⁹ is laid out or expended in favour of a benefice the annual sum or sums payable to the benefice must be reduced by the proportion which the amount so laid out or expended bears to the total amount of money held for the benefice by the commissioners¹⁰.

1 Ie the date of the passing of the Benefices (Stabilization of Incomes) Measure 1951. The property includes (1) any money received as consideration for the sale or exchange or on partition of glebe land under the Ecclesiastical Leasing Acts or the Ecclesiastical Commissioners (Powers) Measure 1936 (see PARA 1159 ante), or by way of premium on the granting of a lease or as a rent or royalty under a lease of mines, minerals, quarries or beds granted under the Acts (see PARA 1156 ante), or as a consideration for the release of any periodical sum or part of any periodical sum forming part of the endowment of the benefice (see PARA 1159 ante); (2) money received on the sale of glebe land under the Glebe Lands Act 1888 (see PARA 1161 ante); (3) any compensation received in respect of the redemption or extinguishment of payments in lieu of tithe (now not payable: see PARA 1215 ante); and (4) any money or stock received under the Town and Country Planning Act 1971: see the Benefices (Stabilization of Incomes) Measure 1951, s 4 (1).

2 Ibid s 4 (1), (2) (a).

3 Ie in accordance with ibid Schedule, Part I.

4 Ibid s 4 (2) (b).

5 Ibid s 4 (2) (c).

6 See PARA 1240 text to note 10 ante.

7 See the text and note 4 supra.

8 Benefices (Stabilization of Incomes) Measure 1951, s 5 (1). In particular the powers conferred by the Ecclesiastical Leasing Acts (see PARA 1159 ante), by the Ecclesiastical Commissioners (Powers) Measure 1936, s 5 (see PARA 1159 ante), and by the Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (see PARA 1159 ante), apply in relation to the sums as they apply in relation to the consideration money, funds and securities referred to in these Acts and Measures: Benefices (Stabilization of Incomes) Measure 1951, s 5 (1).

9 This includes money appropriated under ibid ss 3, 4: see PARA 1240 note 10 ante, and the text and note 4 supra.

10 Ibid s 5 (2).

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13 (para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1242. Appropriations of endowments of benefices.

1242. Appropriations of endowments of benefices.

Where under the provisions of any statute or of any Order in Council ratifying a scheme of the Church Commissioners, as successors to the Ecclesiastical Commissioners, any part of the endowment of any benefice has been or is in the future appropriated as a fund applicable for or towards payment of the stipend of an assistant curate or of the expenses of assistance by clergy or lay workers, the commissioners may require the incumbent of the benefice, or the person or body by whom the fund is administered, to render to them annually or in respect of any stated year or years duly audited accounts of the fund¹. With the approval of the bishop of the diocese in which the benefice is situated the commissioners may from time to time direct (1) that any unexpended income appearing to them not to be required for the purposes for which the fund was appropriated be paid over to them to be held as capital, and invested either for the augmentation of the benefice or for the benefit of their general fund; or (2) that the unexpended income be paid to the incumbent of the benefice¹.

Any account to be rendered must be in such form as the commissioners may require². If at any time a full and sufficient account has not been rendered within two months after the service of an application in writing for it, the commissioners may prepare and submit to Her Majesty in Council a scheme directing that the appropriated fund shall be transferred to them, to be held by them for any purposes in relation to the benefice to which the fund belongs or for the benefit of their general fund as the commissioners, with the approval of the bishop of the diocese, may decide².

¹ Ecclesiastical Commissioners (Powers) Measure 1938, s 8 (2); Church Commissioners Measure 1947, ss 2, 18 (2).

² Ecclesiastical Commissioners (Powers) Measure 1938, s 8 (3).

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13 (para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the

cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1243. Charges on benefices.

1243. Charges on benefices.

Where the endowment of any benefice (the 'recipient benefice') consists of or comprises an annual sum constituting a permanent charge on the endowment or any part of the endowment of any other benefice (the 'charged benefice'), the Church Commissioners may substitute for the annual sum so charged or any part of it an annual sum of the like amount, to be paid by them out of their general fund to the incumbent for the time being of the recipient benefice¹. They may then appropriate for the benefit of their general fund out of any endowment of the charged benefice held by them or payable out of their funds such portion of the endowment as will in their opinion produce an annual income equal to the amount of the annual sum so to be paid out of the general fund². Every such payment to be made out of the general fund must be secured, and every such appropriation for the benefit of the general fund must be effected by an instrument under the commissioners' common seal³.

From and after the taking effect of any such instrument the endowment of the charged benefice is discharged from the payment of the annual sum charged on it, or, as the case may be, from the payment of the part for which a payment out of the general fund has been substituted⁴.

1 Ecclesiastical Commissioners (Powers) Measure 1938, s 4 (1); Church Commissioners Measure 1947, ss 2, 18 (2). These powers are only exercisable (1) at the request of the incumbents of both benefices (s. 4 (4) (i)), or (2) after three months' written notice has been given to the incumbents of the commissioners' intention to exercise the power in relation to their benefices (s. 4 (4) (ii)).

2 Ibid s 4 (1). For the conditions of the exercise of the powers, see note 1 supra.

3 Ibid s 4 (2). The provisions of the Ecclesiastical Commissioners Act 1866, s 5 (repealed), in relation to instruments made under that section extend and apply to any instrument sealed by the commissioners for the foregoing purposes: Ecclesiastical Commissioners (Powers) Measure 1938, s 4 (2).

4 Ibid s 4 (3).

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1240-1243 Stabilisation of endowments ... Charges on benefices

Repealed: Endowments and Glebe Measure 1976 Sch 8.

Provision is made by ss 1-7 (see PARA 1240A) for payments towards stipends of certain clergy following the pooling of endowments, including income from glebe, by ss 10-13

(para 1240B) for the extinguishment of certain charges and trusts and by s 14 (para 1240C) for future gifts for endowment of a benefice. Provision is made for the cessation of guarantee annuities to incumbents and certain other payments to dioceses: Stipends (Cessation of Special Payments) Measure 2005; and PARA 1240A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1244. Power to withdraw or reduce curate grants.

1244. Power to withdraw or reduce curate grants.

Where any annual or other periodical sum is payable out of the Church Commissioners' general fund towards the payment of the stipend of an assistant minister or curate for any benefice pursuant to a grant¹, and the commissioners are of opinion that the grant ought to be determined or reduced in amount, they may, with the written consent of the bishop of the diocese, by an instrument under their seal published in the London Gazette declare that the grant shall be either wholly determined or reduced to such amount as is stated in the instrument². This power to determine or reduce a grant does not prevent the commissioners from discontinuing, suspending or reducing the amount of any grant in any case where it may be lawful or competent for them without reference to the foregoing power to effect the discontinuance, suspension or reduction³.

Before executing any such instrument in relation to any grant the commissioners must give written notice to the incumbent and parochial church council of the parish concerned that the determination of the grant in whole or in part is under consideration, and that any representations made within two months by the incumbent or the council will be duly considered⁴.

Save with the written consent of the incumbent of the benefice in favour of which the grant was made, the determination or reduction of any grant in this manner does not take effect until after the first vacancy of the benefice subsequent to the date of the instrument⁵. Furthermore, where at the date of the instrument an assistant minister or curate is, under or by virtue of an engagement or employment then current, in receipt of a stipend wholly or partly provided out of the grant to which the instrument relates, the determination or reduction of the grant does not take effect until after six months from the date of the instrument or before the termination of the engagement or employment, whichever first happens⁶.

1 Ie a grant made in exercise of the powers conferred by the Ecclesiastical Commissioners Act 1840, s 67, towards poor livings.

2 Ecclesiastical Commissioners (Powers) Measure 1938, s 6 (1); Church Commissioners Measure 1947, ss 2, 18 (2). The determination or reduction takes effect from such date or event as is specified in the instrument, which takes effect on publication: Ecclesiastical Commissioners (Powers) Measure 1938, s 6 (1).

3 Ibid s 6 (3).

4 Ibid s 6 (2).

5 Ibid s 6 (1) proviso (i).

6 Ibid s 6 (1) proviso (ii).

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the

Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1244 Power to withdraw or reduce curate grants

TEXT AND NOTES--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1245. Transfer of administration of curate grants.

1245. Transfer of administration of curate grants.

With a view to transferring to diocesan boards of finance¹ the distribution and administration of payments² towards the stipends of curates, assistant clergy, deaconesses and lay helpers, the Church Commissioners may make block grants³ to the several diocesan boards of finance to be applied by them, subject to such conditions as the commissioners may impose, in making payments for those purposes in the manner appearing to the several boards best calculated to provide assistance where most required within their respective dioceses⁴.

In order to give effect to the transfer, the commissioners, by notice in writing to any person to whom, on 22nd May 1946⁵, a grant towards any such stipend was payable by them, may determine the grant at the expiration of such period, not being less than seven months, as may be specified in the notice⁶.

The transfer does not affect or apply to grants of the commissioners made in consideration of capital benefactions secured for the endowment of particular curacies or other ministries, or to grants to curates in charge of conventional districts⁷.

1 As to diocesan boards of finance, see PARAS 517, 518 ante.

2 The payments were those made out of the commissioners' general fund of such sums as may be allocated: see the Ecclesiastical Commissioners (Curate Grants) Measure 1946, s 1 (1).

3 The grants are made in exercise of the power conferred by the Ecclesiastical Commissioners Act 1840, s 67, towards poor livings, and are calculated in such manner as the commissioners may from time to time prescribe: Ecclesiastical Commissioners (Curate Grants) Measure 1946, s 1 (1); Church Commissioners Measure 1947, ss 2, 18 (2).

4 Ecclesiastical Commissioners (Curate Grants) Measure 1946, s 1 (1).

5 Ie the date of the passing of the Ecclesiastical Commissioners (Curate Grants) Measure 1946.

6 Ibid s 1 (2). A notice is to be deemed to have been duly given if sent through the post in a prepaid letter, and, if the addressee is an incumbent, it is sufficient if the notice is addressed to the parish or place of which he is incumbent or, if there is a vacancy in the benefice, if the notice is addressed to 'the incumbent', or, when sequestrators have been appointed, 'the sequestrators' of the benefice (naming it): s 1 (3).

7 Ibid s 1 (4). As to conventional districts, see PARA 540 ante.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1245 Transfer of administration of curate grants

TEXT AND NOTE 6--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1246. Other powers to make payments.

1246. Other powers to make payments.

In addition to the powers already described the Church Commissioners¹ are empowered to make payments for various purposes out of their general fund². These purposes include the re-endowment of existing bishoprics³ and of poor livings⁴, payments to unbeneficed clergy⁵, loans for the building of church training colleges⁶, payments towards the repair and maintenance of Lambeth Palace⁷, the provision of churches in new housing areas⁸, financial assistance for Church of England schools⁹, payments towards the costs and expenses of an archbishop, bishop or promoter of disciplinary proceedings in respect of such proceedings¹⁰, grants for the payment of the stipend of a clerk in holy orders holding office in a cathedral church (other than a dean, provost or residentiary canon) and the salary of a lay person employed in connection with a cathedral church¹¹, the provision of houses for clerks in holy orders holding office in a cathedral church¹², the repair of a chancel (other than the chancel of a cathedral church) which the capitular body of a cathedral church is wholly or partly liable to repair¹³, payments towards the expenses of the Cathedrals Commission and special commissions¹⁴, payments towards the costs and expenses incurred by any person in connection with an appeal to Her Majesty in Council against a cathedral scheme¹⁵, loans for theological colleges and training establishments¹⁶, and grants to a parsonages board for payment into the parsonages fund¹⁷.

The Church Commissioners must pay out of their general fund the salaries of the First Church Estates Commissioner and the Third Church Estates Commissioner¹⁸, and may in certain cases pay them a pension¹⁹. Pensions payable to the clergy by the Church Commissioners²⁰ must be paid out of the general fund²¹, and the commissioners may make grants out of it for purposes connected with the payment of pensions to retired clergy, their widows and dependants²². They must pay a stipend to the dean and provost and to two residentiary canons of each cathedral church²³, and may make loans for the acquisition, erection or improvement of cathedral property other than the cathedral church²⁴.

1 In respect of powers existing before 1947 (see the text and notes 3-7, 18 *infra*) the Church Commissioners act as successors to the Ecclesiastical Commissioners: Church Commissioners Measure 1947, ss 2, 18 (2); see PARAS 362, 363 *ante*.

2 As to the general fund, see PARA 1234 *ante*.

3 Ecclesiastical Commissioners (Powers) Measure 1936, s 2, Schedule. The commissioners also have power to augment the income of the bishopric of Sodor and Man: s 3.

4 Ecclesiastical Commissioners Act 1840, s 67; Ecclesiastical Commissioners Act 1860, ss 12, 14. This power is extended to poor livings in the diocese of Sodor and Man: Ecclesiastical Commissioners (Sodor and Man) Measure 1930, s 1.

5 Ecclesiastical Commissioners (Provision for Unbeneficed Clergy) Measure 1928, s 1; Ecclesiastical Commissioners (Provision for Unbeneficed Clergy) Measure 1928 (Amendment) Measure 1931, s 1. This power is extended to unbeneficed clergy in the diocese of Sodor and Man: Ecclesiastical Commissioners (Sodor and Man) Measure 1930, s 1.

6 Ecclesiastical Commissioners (Loans for Church Training Colleges) Measure 1931, s 1. The commissioners may also guarantee loans for this purpose: s 2.

7 Ecclesiastical Commissioners Act 1866, ss 7, 8; Ecclesiastical Commissioners Measure 1926, s 6.

8 New Housing Areas (Church Buildings) Measure 1954, s 1: see PARA 1064 *ante*.

- 9 Church Schools (Assistance by Church Commissioners) Measure 1958, s 1.
- 10 Ecclesiastical Jurisdiction Measure 1963, s 58: see PARA 1302 post. This does not include the costs incurred by an archbishop or bishop in respect of proceedings against him for an offence under s 14: s 58.
- 11 Cathedrals Measure 1963, s 31: see PARA 631 ante.
- 12 Ibid s 32: see PARA 632 ante.
- 13 Ibid s 33: see PARAS 633, 1100 ante.
- 14 Ibid s 36: see PARA 612 ante. As to the Cathedrals Commission and special commissions, see s 1, and PARA 612 ante.
- 15 Ibid s 37: see PARA 615 ante.
- 16 Church Commissioners (Loans for Theological Colleges and Training Houses) Measure 1964, ss 1, 2. The commissioners may also guarantee loans for this purpose: s 1.
- 17 Repair of Benefice Buildings Measure 1972, s 19 (3): see PARA 1178 ante.
- 18 Ecclesiastical Commissioners Act 1850, s 2; Church Property (Miscellaneous Provisions) Measure 1960, s 19 (1). The amount of the salaries is fixed by the commissioners with Treasury approval: Ecclesiastical Commissioners (Powers) Measure 1938, s 9. See PARA 379 ante.
- 19 Church Property (Miscellaneous Provisions) Measure 1960, s 20 (1). They may also pay a pension to a widow: s 20 (2A); Church Commissioners Measure 1964, s 3. See PARA 379 ante.
- 20 Ie under the Clergy Pensions Measure 1961, Part I (ss. 1-9): see PARA 738 et seq ante.
- 21 Ibid s 17 (1): see PARA 752 ante. The commissioners must also pay out of their general fund sums required for widows under s 10 (see PARA 754 ante): s 17 (2).
- 22 Ibid s 17 (3): see PARA 752 note 2 ante.
- 23 Cathedrals Measure 1963, s 28: see PARA 631 ante. The residentiary canons must be engaged exclusively on cathedral duties: ss 28, 47.
- 24 Ibid s 34: see PARA 634 ante.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1246 Other powers to make payments

TEXT AND NOTES--The Church Commissioners are also empowered to pay out of their general fund to the bishop of the diocese in Europe (see PARAS 316, 455) and to any suffragan bishop appointed to assist him, such a stipend and such annual sum in respect of his expenses as they think fit: Diocese in Europe Measure 1980 s 4(a). They may also provide the bishop of the Diocese with a suitable residence and assist with the provision of a suitable residence for a suffragan bishop: s 4(b).

NOTE 3--1936 Measure s 3 replaced by Church Commissioners (Miscellaneous Provisions) Measure 1975 s 1 (amended by the Statute Law (Repeals) Act 2004) under which the Commissioners may augment the stipend of the Bishop of Sodor and Man and contribute to his expenses.

NOTE 4--1840 Act s 67 amended: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

TEXT AND NOTE 5--Repealed: Endowments and Glebe Measure 1976 Sch 8.

NOTE 6--The functions of the Central Board of Finance, under the Ecclesiastical Commissioners (Loans for Church Training Colleges) Measure 1932 s 1, are transferred to the Archbishops' Council: National Institutions of the Church of England (Transfer of Functions) Order 2007, SI 2007/1556.

TEXT AND NOTE 9--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

TEXT AND NOTES 11-15--Cathedrals Measure 1963 ss 31-33, 36-37 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

TEXT AND NOTE 14--For 'Cathedrals Commission' read now 'Cathedral Statutes Commission': Cathedrals Measure 1976 s 1(1) (repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3).

TEXT AND NOTE 17--For 'the parsonage fund' read 'any fund or funds capable of being applied for the purposes of the provision, improvement or repair of parsonage houses': 1972 Measure s 19(3) (amended by Church of England (Miscellaneous Provisions) Measure 2005 Sch 2 para 10).

NOTE 19--1960 Measure s 20(1), (2A) now as substituted by Church of England (Miscellaneous Provisions) Measure 2005 s 5; 1960 Measure s 20(2A) amended by SI 2005/3325. The 1960 Measure s 20(2A) now allows the commissioners to pay a pension to a widow, a widower or a surviving civil partner.

NOTES 20, 21--Clergy Pensions Measure 1961 replaced in part, see now Church of England Pensions Regulations 1988, SI 1988/2256 (amended by SI 1992/1748, SI 1997/1929, SI 2005/3325, SI 2009/2109).

1961 Measure s 17(1), (2) substituted: Pensions Measure 1997 s 10, Sch 1 para 5.

NOTE 22--Amended: Clergy Pensions (Amendment) Measure 1982 s 1; see PARA 752.

TEXT AND NOTES 23, 24--Cathedrals Measure 1963 ss 28, 34, 47 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1247. Mode of making payments etc.

1247. Mode of making payments etc.

Any grant by the Church Commissioners, whether voted in the form of a stipend or as a lump sum, may be made on the sole authority of a resolution of their Board of Governors¹.

Notwithstanding anything in any Act, Measure, Order in Council or scheme the commissioners may pay any net income payable by them to an incumbent on 1st January, 1st April, 1st July and 1st October in each year and may, at the request of the person entitled, pay an instalment before the end of the quarter².

Where the commissioners have made a permanent annual grant for the cure of souls in a benefice³ they may, at the incumbent's request, capitalise the grant for an authorised purpose⁴ so as to produce an annual income equal to the amount of the annual grant⁵.

1 Church Property (Miscellaneous Provisions) Measure 1960, s 12 (1). As to the Board of Governors, see PARA 368 ante.

2 Ibid s 17.

3 I.e. a grant made in accordance with the provisions of the Ecclesiastical Commissioners Act 1840, the Ecclesiastical Commissioners Act 1866, s 5, or the Church Property (Miscellaneous Provisions) Measure 1960, s 12 (1); s 13.

4 'Authorised purpose' in relation to a benefice means any purpose for which funds held by the commissioners to the credit of the benefice may be applied under the Ecclesiastical Commissioners (Powers) Measure 1936, s 5 (see PARA 1159 ante), or the Ecclesiastical Commissioners (Powers) Measure 1938, s 3 (3) (see PARAS 1159, 1161 ante), and any purpose for which funds appropriated for the augmentation of the benefice may be applied under the Queen Anne's Bounty (Powers) Measure 1939, s 1 (see PARA 1239 ante): Church Property (Miscellaneous Provisions) Measure 1960, s 13.

5 Ibid s 13.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1247 Mode of making payments, etc

TEXT AND NOTE 1--Repealed: Church of England (Miscellaneous Provisions) Measure 2000 Sch 8 Pt I.

TEXT AND NOTE 2--Payments now made by Archbishops' Council: 1960 Measure s 17 (amended by the Church of England (Miscellaneous Provisions) Measure 2000 Sch 3 para 7).

TEXT AND NOTES 3-5--Repealed: Endowments and Glebe Measure 1976 Sch 8.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(ii) Church Commissioners' Functions/1248. Powers with regard to land.

1248. Powers with regard to land.

The Church Commissioners also have power to sell or exchange land belonging to a see, chapter, dean, canon, prebendary or other dignitary or officer (not being a body corporate in a cathedral church) with the consent of the bishop, chapter or other officer as the case may be¹.

¹ Ecclesiastical Commissioners Act 1840, s 68; Ecclesiastical Commissioners Act 1841, s 21; Ecclesiastical Houses of Residence Act 1842, s 8; Church Commissioners Measure 1947, ss 2, 18 (2); Cathedrals Measure 1963, s 53, Sch. 1.

UPDATE

1238-1248 Church Commissioners' Functions

The Church Commissioners must continue to manage their assets for the advancement of any purpose for which they held those assets immediately before 1 January 1999 (ie the date on which the National Institutions Measure 1998 came into force: see PARA 427A NOTE 1), and in so doing must have particular regard to the requirements of the Ecclesiastical Commissioners Act 1840 s 67 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required: 1998 Measure s 8.

1248 Powers with regard to land

TEXT AND NOTES--As from the relevant date (see PARA 610A.1), any reference in the Ecclesiastical Commissioners Act 1840 s 68 to a chapter, cathedral chapter, dean and chapter or capitular body is to be construed as a reference to the corporate body of the cathedral: Cathedrals Measure 1999 ss 36(2), 38(2), (3).

NOTE 1--Ecclesiastical Houses of Residence Act 1842 amended: Constitutional Reform Act 2005 Sch 11 para 8 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(iii) Investment of Funds/1249. Power of investment.

(iii) Investment of Funds

1249. Power of investment.

A statutory scheme enables certain funds to be invested¹. The funds concerned are (1) the corporate funds of the Central Board of Finance of the Church of England², (2) the corporate funds of any diocesan authority³, (3) the funds of any church educational endowment⁴, and (4) any funds held by the Central Board or a diocesan authority or any other person or body upon any trust for exclusively charitable objects⁵ connected with the work of the Church of England, other than a trust coming into operation after 20th February 1958⁶ which expressly excludes these provisions⁷.

Notwithstanding anything contained in any trust instrument⁸ the trustees or bodies responsible for the investment of the fund may contribute it to an investment fund⁹ or may deposit money belonging to it in a deposit fund¹⁰, and such a contribution or deposit is an authorised investment for all purposes¹¹.

1 See the Church Funds Investment Measure 1958, s 1, Schedule, and PARAS 1250, 1251 post.

2 Ibid s 2 (a). As to the Central Board, see PARA 394 ante. It is an exempt charity within the meaning of the Charities Act 1960, s 45 (1), Sch. 2, PARA. (a).

3 Church Funds Investment Measure 1958, s 2 (b). 'Diocesan authority' means a diocesan board of finance (see PARA 517 ante), including a body exercising the functions of a diocesan board of finance for the purposes of the Diocesan Boards of Finance Measure 1925 and any body appointed by a diocesan synod to act as trustees of any diocesan trust property: Church Funds Investment Measure 1958, s 8; Synodical Government Measure 1969, s 4 (7).

4 Church Funds Investment Measure 1958, s 2 (c). 'Church educational endowment' means an educational endowment which includes among its purposes instruction in religious knowledge according to the faith and practice of the Church of England, and 'educational endowment' means an endowment or part of an endowment which, or the income of which, has been made applicable or is applied for the purposes of education: see s 8.

5 As to what is 'charitable', see CHARITIES vol 8 (2010) PARA 2 et seq.

6 Ie the date of the coming into operation of the Church Funds Investment Measure 1958.

7 Ibid s 2 (d). The Church of England Pensions Board (see PARA 751 ante) has power to invest money in this manner: see the Clergy Pensions Measure 1961, s 32 (1) (u). The capitular body of any cathedral church also has the power: see the Cathedrals Measure 1963, s 21 (1) (b), and PARA 629 ante.

8 'Trust instrument' means any Act, Measure, trust deed, letters patent, decree, scheme, order or other instrument or authority affecting the administration of one of the funds referred to above: Church Funds Investment Measure 1958, s 8.

9 See PARA 1250 post.

10 See PARA 1251 post.

11 Church Funds Investment Measure 1958, s 3 (1). Sums distributed from an investment fund as income are to be treated as income of the trust, and sums distributed on withdrawal from or on the winding up of that investment fund are, unless specifically designated as income by the Central Board administering that fund, to be treated as capital of the trust: s 3 (2). For the meaning of 'the Central Board' in this context, see PARA 1250 note 2 post. Notwithstanding that the assets comprised in an investment fund may include land, an interest in an investment fund is not, for the purpose of any rule of law concerning charities or of any trust instrument, deemed to be an interest in land or in money to be laid out in the purchase of land: s 4. A contribution to or a

withdrawal from an investment fund or a deposit in or a withdrawal from a deposit fund does not require the consent or direction of the Charity Commissioners: s 5 (2); Charities Act 1960, s 48, Sch. 7. The Charity Commissioners' powers and jurisdiction is not otherwise affected: Church Funds Investment Measure 1958, s 5 (3).

UPDATE

1249 Power of investment

NOTE 2--Charities Act 1960 s 45(1) now Charities Act 1993 s 96(1): see CHARITIES vol 8 (2010) PARA 315.

TEXT AND NOTE 7--The Church Funds Investment Measure 1958 s 2 will have effect, and will be deemed always to have had effect, as if the corporate funds of the Archbishops' Council were included amongst the funds mentioned in s 2(d): Church of England (Miscellaneous Provisions) Measure 2006 s 4.

NOTE 7--Cathedrals Measure 1963 s 21 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(iii) Investment of Funds/1250. Investment funds.

1250. Investment funds.

There is constituted by the statutory scheme¹ an investment fund held by the Central Board², consisting of contributions made to it³. The board may constitute one or more additional investment funds⁴. Subject to the board's consent and to any consents required by a trust instrument⁵, contributions may be made to an investment fund by paying cash or transferring assets to the board for the purposes of that fund⁶. The board has power to invest money comprised in an investment fund⁷. For convenience in recording the contributors' interests each investment fund is regarded as being divided into shares each representing an equal undivided part or share in that fund⁸. There are provisions in the statutory scheme for the valuation of such shares⁹, the distribution of income¹⁰, withdrawals¹¹ and winding up¹².

1 As to the statutory scheme, see PARA 1249 ante.

2 In the Church Funds Investment Measure 1958, ss 3, 5, 6, 7, Schedule, 'the Central Board' means the Central Board of Finance of the Church of England (as to which see PARA 394 ante) or any body substituted for it pursuant to Schedule para 17: ss 1, 8, Schedule para 1. Some other body corporate having objects concerned with the Church of England may be appointed to administer all or any of the investment funds or the deposit funds (see PARA 1251 post) in place of the Central Board of Finance of the Church of England in relation to such funds: Schedule paras 17, 26. References to the Central Board in relation to such funds are to be substituted by references to the body so appointed: Schedule paras 1, 17, 26. The Central Board is an exempt charity within the meaning of the Charities Act 1960, s 45 (1), Sch. 2, PARA. (a).

3 See the Church Funds Investment Measure 1958, Schedule para 2 (1).

4 Ibid Schedule para 2 (2).

5 For the meaning of 'trust instrument', see PARA 1249 note 8 ante.

6 Church Funds Investment Measure 1958, Schedule para 3. Where the cash or other assets are already vested in the board as part of its corporate funds the contribution is made by appropriating the cash or other assets to the investment fund: Schedule para 3 (1).

7 Ibid Schedule para 5.

8 Ibid Schedule para 6 (1).

9 See ibid Schedule paras 7-10.

10 See ibid Schedule para 11.

11 See ibid Schedule para 8 (3)-(6).

12 See ibid Schedule para 18.

UPDATE

1250 Investment funds

NOTE 2--1958 Measure s 7 repealed: Government Trading Act 1990 Sch 2 Pt I. For provisions relating to exempt charities see now Charities Act 1993 ss 3, 96, Sch 2.

TEXT AND NOTE 8--Now each investment fund comprises shares of either or both of two classes, (a) income shares, in respect of which attributable income is distributed or retained (or both distributed and retained) in the income reserve in accordance with

the scheme, and (b) accumulation shares, in respect of which attributable income is accumulated by investment as capital of the investment fund in accordance with the scheme: 1958 Measure Schedule para 6(1); Church of England (Miscellaneous Provisions) Measure 1995 s 7, Schedule para 3.

NOTES 9-12--1958 Measure Schedule paras 7-11, 18 amended: 1995 Measure s 7, Schedule.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(9) FUNDS AND INCOME/(iii) Investment of Funds/1251. Deposit funds.

1251. Deposit funds.

There is also constituted by the statutory scheme¹ a deposit fund held and administered by the Central Board² for the purpose of receiving deposits of money³. The board may constitute one or more additional deposit funds⁴. The terms upon which money may be deposited, including the rate of interest and the length of notice required for withdrawals, is in the board's discretion⁵. A specific range of investments is permitted for the investment of deposits by the board⁶. There are provisions for the distribution of income⁷ and the winding up of deposit funds⁸.

1 As to the statutory scheme, see PARA 1249 ante.

2 For the meaning of 'the Central Board', see PARA 1250 note 2 ante.

3 Church Funds Investment Measure 1958, Schedule para 19 (1). The power to deposit money is subject to any consent required by a trust instrument: Schedule paras 3 (3), 26. For the meaning of 'trust instrument', see PARA 1249 note 8 ante. The board may refuse to accept a deposit: Schedule para 25 (1).

4 Ibid Schedule para 19 (2).

5 Ibid Schedule para 20 (1).

6 See ibid Schedule para 21.

7 See ibid Schedule para 22.

8 See ibid Schedule para 23.

UPDATE

1251 Deposit funds

TEXT AND NOTES--For any deposit fund the Central Board may keep a separate account, a Deposit Fund Reserve, containing such money as the board may allocate out of the income of the investment of the fund, for the purpose of preventing or reducing potential losses in the fund or of augmenting the rate of interest paid to depositors: 1958 Measure Schedule para 22A(1) (Schedule para 22A added by the Church of England (Miscellaneous Provisions) Measure 2000 s 14(5)).

NOTE 6--1958 Measure Schedule para 21 amended: Church of England (Miscellaneous Provisions) Measure 2000 s 14(4). Until 1 September 2005, or for such further period or periods as the General Synod may by resolution direct, the 1958 Measure Schedule para 21 also applies in relation to Deposit Fund Reserves, with modifications: Schedule para 22A(2) (Schedule para 22A as added: see TEXT AND NOTES).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1252. Ecclesiastical persons as owners of property.

(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS

1252. Ecclesiastical persons as owners of property.

Property may be affected with an ecclesiastical character by being vested in a person or succession of persons as its trustees for spiritual purposes¹. So far as the relation of the owner to the thing owned is concerned, a corporation is, within the limits of its powers, as capable of standing in that relation as a person or body of persons². Having regard to the necessity of securing that property given for the purpose of promoting the performance of particular functions shall be permanently devoted to that purpose and to the impossibility of any individual holder of an office affording such permanent security³, ecclesiastical property is in general vested in an ecclesiastical corporation recognised by the law as having a permanent capacity in right of some office or function of holding property, thereby securing that it shall be applied to the purpose intended⁴.

1 See PARAS 1051, 1052 ante. It does not necessarily follow that the person in whom the property is so vested is an owner of it for the purposes of the Metropolis Management Acts: *Angell v Vestry of Paddington* (1868) LR 3 QB 714; and see PARA 1084 ante.

2 Interpretation Act 1889, ss 2, 19. A body corporate is capable of acquiring and holding any real or personal property in joint tenancy as if it were an individual: Bodies Corporate (Joint Tenancy) Act 1899, s 1 (1).

3 See 1 BI Com (14th Edn) 470.

4 See CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1103, 1114. As to the Church Commissioners, see PARA 363 ante; as to diocesan boards of finance and parsonages boards, see PARAS 517, 520 ante.

UPDATE

1252 Ecclesiastical persons as owners of property

NOTE 2--Sections 2, 19 now Interpretation Act 1978 Sch 1, Sch 2 para 4(1), (5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1253. Ecclesiastical corporations.

1253. Ecclesiastical corporations.

A corporation sole which is recognised by the law as having perpetual succession in right of an office or function of a spiritual character is an ecclesiastical corporation¹. A corporation aggregate which is constituted for a spiritual purpose is an ecclesiastical corporation².

1 1 Bl Com (14th Edn) 470: see PARA 1254 post.

2 1 Bl Com (14th Edn) 470: see PARA 1255 post. It is not the description of the persons who are the members of a corporation, but the purpose of its institution, which characterises it to be a lay or a spiritual foundation: *A-G v St Cross Hospital* (1853) 17 Beav 435.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1254. Ecclesiastical corporations sole.

1254. Ecclesiastical corporations sole.

Archbishops¹, bishops², some deans³, prebendaries⁴, vicars choral⁵, canons⁶, all archdeacons⁷ and incumbents⁸, including rectors, vicars and perpetual curates⁹ (now vicars¹⁰), and rectors and vicars of new benefices created by pastoral schemes¹¹ are corporations sole¹². They are all ecclesiastical corporations except a rector while the rectory is in lay hands¹³.

1 1 Roll Abr 512.

2 Co Litt 250A.

3 See 1 Bl Com (14th Edn) 470.

4 *Mirehouse v Rennell* (1833) 1 C1 & Fin 527 at 538, HL.

5 *Gleaves v Parfitt* (1860) 7 CBNS 838.

6 *Mirehouse v Rennell* (1833) 1 C1 & Fin 527 at 538, HL; Cathedrals Measure 1963, s 15 (1).

7 *Tufnell v Constable* (1838) 7 Ad & El 798.

8 See PARA 689 ante.

9 Queen Anne's Bounty Act 1714, s 4.

10 See PARA 771 ante.

11 Pastoral Measure 1968, s 22 (4).

12 As to corporations sole, see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1111-1112.

13 See PARA 770 ante, 1258 post.

UPDATE

1254 Ecclesiastical corporations sole

TEXT AND NOTE 6--Cathedrals Measure 1963 s 15 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

NOTE 11--Now Pastoral Measure 1983 s 23(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1255. Ecclesiastical corporations aggregate.

1255. Ecclesiastical corporations aggregate.

A corporation aggregate may be either composed of constituent parts not essentially different, or it may be a body with one or more members or classes of members essentially differing from other members¹. Any of the constituent members may themselves be corporations², and where the members are entirely spiritual, that is to say where they are members solely in their spiritual capacities, the corporation is an ecclesiastical corporation; but even where the members are all spiritual persons, unless they are such in an entirely spiritual capacity, the corporation is not ecclesiastical unless the intention of its foundation is spiritual³.

Chapters of cathedrals are ecclesiastical corporations aggregate⁴, as are also colleges or corporations of vicars choral, priest vicars, senior vicars, custos and vicars, or minor canons⁵, which are expressly excepted from the powers of leasing given by the Ecclesiastical Leasing Acts to ecclesiastical corporations in general. A hospital may be an ecclesiastical corporation⁶, depending upon the object for which it is founded⁷.

1 See CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1109-1110.

2 Thus a dean and chapter is a corporation aggregate (see *infra*) while the canons are, and the dean may be, a corporation sole (see PARA 1254 *ante*).

3 See PARA 1253 note 2 *ante*.

4 See PARA 638 *ante*.

5 Ecclesiastical Leasing Act 1842, s 1. This Act no longer applies to any body corporate, whether aggregate or sole, in a cathedral church: Cathedrals Measure 1963, s 53, Sch. 1.

6 Ecclesiastical Leasing Act 1842, s 1.

7 *A-G v St Cross Hospital* (1853) 17 Beav 435.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1256. Other ecclesiastical corporations.

1256. Other ecclesiastical corporations.

Parochial church councils are corporations¹. The trustees of any charity for religious charitable purposes may apply to the Charity Commissioners to be registered as a corporate body and, if the commissioners deem it expedient, may thereupon become a body corporate². Churchwardens are for some purposes a corporation³ as also, for some purposes, are the minister and churchwardens of a parish or ecclesiastical district⁴.

1 Parochial Church Councils (Powers) Measure 1956, s 3: see PARA 569 ante.

2 Charitable Trustees Incorporation Act 1872, s 1.

3 See PARA 550 ante.

4 See the School Sites Act 1841, s 7; School Sites Act 1844, s 4; and EDUCATION vol 15(2) (2006 Reissue) PARA 1354. As to the City of London, see PARA 550 note 1 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1257. Lay corporations.

1257. Lay corporations.

Lay as distinguished from ecclesiastical corporations include all corporations sole or aggregate, whether the members are spiritual persons or not, the object of which is not spiritual¹. Thus the Universities of Oxford, Cambridge and Durham, and the colleges in them, are lay foundations².

¹ See PARA 1253 ante.

² *R v Cambridge University* (1765) 3 Burr 1647 at 1656. As to the freedom from religious tests of these universities and the colleges already founded at the passing of the Universities Tests Act 1871, see PARAS 1392, 1393 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/7. PROPERTY OF THE CHURCH OF ENGLAND/(10) ECCLESIASTICAL PERSONS AS PROPERTY OWNERS/1258. Lay rectors.

1258. Lay rectors.

At the dissolution of the monasteries and other religious and ecclesiastical houses the property of lay rectors in them was transferred to the Crown, the transfer being confirmed by statute¹. The statutes of dissolution provided that the persons to whom any grants should be made by letters patent from the Crown should hold the land, tithes, churches, chapels, advowsons, patronages and other hereditaments so granted in like manner, form and conditions as the abbots, priors and other chief governors of the religious houses held them², but as the grants could be, and were in fact, made to laymen, who by the law of the church could not have cure of souls, the effect of the patents in these cases was that benefices which had been appropriations in the hands of a monastery became impropriations³ in the hands of the lay persons or corporations to whom they were granted, while the impropiators who received such grants were, by virtue of the patent by which the grant was made, corporations and were recognised as lay rectors⁴.

A lay rector is in some cases liable to repair the chancel⁵, and is entitled to the chief seat in it unless another person can show a prescriptive right to it⁶.

¹ Suppression of Religious Houses Act 1535 (repealed); Suppression of Religious Houses Act 1539 (repealed except for s 19).

² Suppression of Religious Houses Act 1535, s 2 (repealed). The Suppression of Religious Houses Act 1539, s 2 (repealed), provided that the King should hold, possess, and enjoy the possessions in as large and ample manner and form as the religious houses had held them.

³ See *Duke of Portland v Bingham* (1792) 1 Hag Con 157, and PARA 770 ante.

⁴ 1 Bl Com (14th Edn) 386.

⁵ See PARAS 1096, 1100 ante.

⁶ *Hall v Ellis* (1609) Noy 133; *Spry v Flood* (1840) 2 Curt 353 at 357; *Stileman-Gibbard v Wilkinson* [1897] 1 QB 749 at 761, 762. As to seating of parishioners, see PARA 555 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1259. Courts in pre-Norman times.

8. ECCLESIASTICAL JURISDICTION

(1) THE ECCLESIASTICAL JUDICIAL SYSTEM

(i) History of the Jurisdiction

1259. Courts in pre-Norman times.

Before the Norman Conquest¹ both ecclesiastical and civil causes were tried in the courts of the hundred and shire in which the bishop or, in the hundred court, the bishop or archdeacon sat with temporal officials².

1 As to the constitutional results of the establishment of Christianity in England, the partnership between the monarchy and the church and the part played by the church in the making of laws and the administration of justice, see 2 Hodgkin's *History of the Anglo-Saxons* (1935) 452-457.

2 Makower, *Constitutional History of the Church of England* (English translation) 384, quoting laws of Edgar and Knut, the following being the author's translation of the laws of Edgar (Edgar III c. 5): 'And let the hundred-gemot be attended as it was before, fixed; and thrice in the year let a burgh-gemot be held; and twice a 'shire-gemot; and let there be present the bishop of the shire and the ealderman, and there expound both things, as well the law of God as the secular law'. The district of the ealderman, like that of the bishop, extended over several counties. See also the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 1-22. 1 Burn's *Ecclesiastical Law* (4th Edn) 57 mentions a right of appeal on the ground of failure of justice from these courts to the King in his court of nobles, but see 1 Holdworth's *History of English Law* (7th Edn) 9. See generally Phillimore, *Ecclesiastical Law* (2nd Edn) 1108.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1260. Separation of ecclesiastical from civil courts.

1260. Separation of ecclesiastical from civil courts.

In the early years of his reign William I maintained and strengthened the system of community courts¹, but between 1072 and 1076² he separated the ecclesiastical courts from the civil courts, forbidding the bishops to hold ecclesiastical pleas in the civil courts and prescribing that all cases relating to the cure of souls should be tried in the church courts³. The courts of the archdeacons⁴, bishops and archbishops date from this period⁵.

1 1 Holdsworth's History of English Law (6th Edn) 5-15.

2 The Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 1 states that the date was probably 1072.

3 Makower, Constitutional History of the Church of England (English translation) 417; the text of the Ordinance is printed in App. 1 to that work. The cases to be tried in the church courts are described as any 'causa quae ad regimen animarum pertinet'. See also Phillimore, Ecclesiastical Law (2nd Edn) 1109.

4 See PARA 1266 note 9 post.

5 3 Bl Com (14th Edn) 63-65; cf. 4 Co Inst 260.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1261. Growth of ecclesiastical jurisdiction.

1261. Growth of ecclesiastical jurisdiction.

Following their separation from the civil tribunals the ecclesiastical courts¹ in time established a large field of jurisdiction in both criminal and civil matters. Among the former, in addition to all offences of the clergy and of churchwardens² in connection with their offices, jurisdiction extended to a number of crimes or offences of the laity which by the laws of the realm were of ecclesiastical cognisance, such as heresy, brawling in church or churchyard and defamation³. Among the latter were matrimonial causes and divorce and testamentary causes and the incidents to them, such as probate of wills and testaments and grants of administration and controversies touching them. Where ecclesiastical courts exceeded their jurisdiction they were restrained by prohibition⁴.

1 For a detailed discussion of the growth and decline of ecclesiastical jurisdiction, see 1 Holdsworth's History of English Law (7th Edn) 614 et seq. For the present jurisdiction, see PARA 1267 et seq post.

2 As to jurisdiction over lay persons, see PARA 1351 post.

3 See PARA 1264 post.

4 13 Edw. 1 (Circumspecte Agatis) (1285) (repealed). See also 18 Edw. 1 (Writ of Consultation) (1290); 9 Edw. 2 stat. 1, c. 1 (Articles for the Clergy) (1315); 50 Edw. 3 c. 4 (Confirmation of Liberties etc.) (1376) (all repealed); and eg *Brock v Richardson* (1786) 1 Term Rep 427; *Dorwood v Brikinden* (1610) 2 Brownl 26; *Briggham v Robson* (1670) 2 Keb 719; and PARA 1268 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1262. Effects of the Reformation.

1262. Effects of the Reformation.

The repudiation of papal authority and the assertion of royal supremacy in the sixteenth century had certain effects in relation to the Church's judicial system, but they were slight compared with the changes affecting doctrine and liturgy¹. The ecclesiastical courts in England continued to function with no real break in continuity, although a notable change was the recognition of laymen who were doctors only of the civil law² as eligible for ecclesiastical judgeships³.

1 See eg para 933 ante.

2 He not holding academic qualifications in canon law. The study of canon law in the universities was suppressed by Thomas Cromwell on his visitation of Oxford and Cambridge as the King's vicar-general: Injunctions of 1535, Stat Acad Cantab 134; Suppression of the Monasteries (Camden Society 1843 vol 26) 70; Duggan, Twelfth Century Decretal Collections (1963) 1. Knowledge of the canon law continued, however, to be necessary for practice in the ecclesiastical courts, and the college of Doctors' Commons became the recognised centre of study and professional training in the subject: see the Report of the Archbishops' Commission on Canon Law (SPCK 1947) 52, 53; and see PARA 1298 note 1 post.

3 See 37 Hen. 8 c. 17 (Ecclesiastical Jurisdiction) (1545) (repealed).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1263. Ecclesiastical appeals.

1263. Ecclesiastical appeals.

From the reign of Stephen¹, and probably before², appeals from the ecclesiastical courts had been brought to Rome. Such appeals were prohibited in 1532 as part of the Reformation³; in the following year this prohibition was confirmed and appeals from the archbishop's court and appeals which had formerly been made to Rome were directed to be made henceforth to the King in Chancery⁴. For the purpose of hearing appeals there was constituted the High Court of Delegates⁵, which remained the supreme court of appeal in ecclesiastical matters until it was superseded on 1st February 1833 by the Jurisdiction of the Queen in Council⁶.

1 1 Burn's Ecclesiastical Law (4th Edn) 58.

2 Makower, Constitutional History of the Church of England (English translation) 225-227.

3 Ecclesiastical Appeals Act 1532, s 3 (repealed); see *Parham v Templar* (1821) 3 Phillim 223 at 241 et seq.

4 Submission of the Clergy Act 1533, s 4 (repealed). Appeals to the King in Chancery superseded appeals in cases touching the King to the Upper House of Convocation, under the Ecclesiastical Appeals Act 1532, s 4 (repealed): see *Re Gorham v Bishop of Exeter, ex parte Bishop of Exeter* (1850) 10 CB 102.

5 Submission of the Clergy Act 1533, s 4 (repealed). The Court of Delegates was so called because the judges in it sat by virtue of the King's commission under the Great Seal. The commissioners were usually some of the lords spiritual and temporal and one or more of the twelve judges and one or more of the doctors of civil law: see 3 Bl Com (14th Edn) 66. For the history of the Court of Delegates, see 3 Bl Com (14th Edn) 66; 1 Holdsworth's History of English Law (6th Edn) 603-605. See also Duncan, The High Court of Delegates (Cambridge 1971). As to the reasons for the transfer of jurisdiction, see also the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 23, 24.

6 Privy Council Appeals Act 1832, s 3 (repealed). As to the present jurisdiction in respect of appeals, see PARA 1285 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1264. Curtailment of ecclesiastical jurisdiction.

1264. Curtailment of ecclesiastical jurisdiction.

During the nineteenth century the jurisdiction of the ecclesiastical courts was much curtailed. Their cognisance in cases of defamation was taken away in 1855¹; two years later their jurisdiction in testamentary matters and in cases of intestacy was transferred to the Court of Probate then created² and their jurisdiction in matrimonial causes was transferred to the newly-established Divorce Court³. In 1860 their power to punish lay persons for brawling was abolished⁴.

1 Ecclesiastical Courts Act 1855, s 1 (repealed).

2 Court of Probate Act 1857, ss 3, 4 (repealed).

3 Matrimonial Causes Act 1857, ss 2, 4 (repealed). The Act did not, however, affect the granting of marriage licences: s 2 (repealed). With this curtailment of jurisdiction there came about the closure of Doctors' Commons whose members had held a virtual monopoly of the right of audience in the ecclesiastical courts. Thereafter practice in those courts was gradually thrown open to common lawyers: see Kemp, Introduction to Canon Law in the Church of England 52, 53. See also PARA 1298 note 1 post.

4 Ecclesiastical Courts Jurisdiction Act 1860, s 1 (repealed).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1265. Movement towards reform.

1265. Movement towards reform.

In the latter half of the nineteenth century there was a growing demand for reform of the ecclesiastical judicial system. This sprang largely from the controversies which had arisen over questions of ritual and ceremonial and of the legality of ornaments¹, most of which carried doctrinal implications. Much feeling was aroused by cases in which clergymen were prosecuted for offences relating to these matters. The enactment of the Public Worship Regulation Act 1874² increased rather than allayed the discontent, and there was resentment in particular of the fact that the final appellate authority in ecclesiastical causes was a non-ecclesiastical body, the Judicial Committee of the Privy Council³. The multiplicity of courts and other authorities empowered to adjudicate in this sphere was an additional cause of dissatisfaction⁴.

Between 1883 and 1952 no fewer than six commissions made proposals for the reform of the system⁵. Finally, in 1954, a report⁶ was submitted by the Archbishops' Commission on Ecclesiastical Courts which led to the enactment of the Ecclesiastical Jurisdiction Measure 1963⁷.

1 See PARA 953 et seq ante.

2 The Public Worship Regulation Act 1874 (repealed) provided a procedure for enforcing the law relating to worship and ornaments by representation to the bishop and proceedings in the provincial courts of Canterbury and York, with a right of appeal to the Queen in Council: see s 9.

3 See PARA 1263 ante.

4 In the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) the existing system was described as 'a jungle of courts': see at 38.

5 See the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) xi, 39 et seq.

6 The Report of the Archbishops' Commission on Ecclesiastical Courts was entitled 'The Ecclesiastical Courts: Principles of Reconstruction'. The chairman of the commission was Lloyd-Jacob J.

7 The fact that the Revised Canons Ecclesiastical (see PARA 308 ante) were in course of preparation during this period made the reconstruction of the courts, in the commission's opinion, a matter of great urgency: Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 80.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(i) History of the Jurisdiction/1266. The Ecclesiastical Jurisdiction Measure 1963.

1266. The Ecclesiastical Jurisdiction Measure 1963.

The specific purposes for which the Ecclesiastical Jurisdiction Measure 1963¹ was designed were to reform and reconstruct the system of ecclesiastical courts of the Church of England, to replace with new provisions the existing enactments relating to ecclesiastical discipline and to abolish certain obsolete jurisdictions and fees².

Among the principal features of the Measure are the abolition of criminal jurisdiction over the laity³ and, in the case of the clergy, the creation of a distinction for the purposes of jurisdiction between offences involving and those not involving matter of doctrine, ritual or ceremonial⁴.

The obsolete jurisdictions abolished by the Measure included the power of the Queen in Council to hear and determine suits of duplex querela⁵ and the Archbishop of Canterbury's powers to cite a bishop for an ecclesiastical offence⁶ and to cite any other person for heresy⁷. Also abolished were the courts of audience⁸ and archdeacons' courts⁹, all original jurisdiction exercised by the Arches Court of Canterbury and the Chancery Court of York¹⁰, and consistory courts' jurisdiction to hear and determine proceedings for the recovery of tithes or against lay officers of a church¹¹ or by way of suit for perturbation of seat¹². It was further provided that mortuaries (or corse-presents)¹³, synodals¹⁴, procurations¹⁵ and pentecostals¹⁶ should cease to be exigible¹⁷, and that no person should be liable to imprisonment in consequence of being excommunicated¹⁸.

It was declared that nothing in the Measure should affect any prerogative of the Crown¹⁹, or the existing procedure relating to the confirmation of the election of bishops²⁰, or any power of the High Court to control the proper exercise by ecclesiastical courts of their functions²¹, or the mode of appointment, office and duties of vicars-general of provinces or dioceses²², or the visitatorial powers of archdeacons²³, or the mode of appointment, office and duties of the official principal of an archdeacon²⁴, or the jurisdiction of the Master of the Faculties²⁵.

In addition to the repeal of numerous earlier enactments²⁶ it was provided that any canon, constitution, decretal or other like instrument forming part of the law ecclesiastical which was inconsistent with the provisions of the Measure should, to the extent of the inconsistency, cease to have effect²⁷.

1 The Ecclesiastical Jurisdiction Measure 1963 was passed on 31st July 1963 and came into operation on 1st March 1965, the day appointed by the archbishops jointly under s 88: see London Gazette, 22nd February 1965. The Measure does not extend to the Channel Islands, which for this purpose are deemed not to be included in the diocese of Winchester (s. 84; see PARA 402 ante), but it may be extended to the Isle of Man by Act of Tynwald (s. 85).

2 Ecclesiastical Jurisdiction Measure 1963, long title. The Measure has had the effect of removing many of the former grounds of complaint (see PARA 1265 ante), but it seems doubtful whether the need emphasised by the Archbishops' Commission for a drastic reduction in the number of existing courts and in the varieties of procedure has been adequately met (see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 50, and PARA 1265 ante). For the courts exercising jurisdiction under the Measure, see PARA 1272 et seq post.

3 See PARA 308 ante, 1350 post.

4 See the Ecclesiastical Jurisdiction Measure 1963, s 14, and PARA 1352 et seq post. The two categories of offences are commonly referred to as 'reserved cases' and 'conduct cases' respectively (see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 48, 80), but while the latter category is exclusive of questions of doctrine, ritual and ceremonial the former is not necessarily restricted to such questions: eg

doctrinal issues might be involved in a case where the ostensible ground of complaint was failure to baptise on demand (see PARA 993 ante). A similar distinction applies to faculty proceedings. When proceedings are instituted, the choice of court and procedure will depend upon the category to which the case belongs: see PARA 1293 et seq post. One of the new courts established by the Measure, the Court of Ecclesiastical Causes Reserved, is especially concerned with cases involving matter of doctrine, ritual and ceremonial: see PARAS 1289, 1290 post.

5 Ecclesiastical Jurisdiction Measure 1963, s 82 (1): see PARA 823 ante, 1346 post.

6 Ibid s 82 (1). As to the former exercise of this power, see *Bishop of St David's v Lucy* (1699) 1 Ld Raym 447 at 447, 448, per Holt CJ; *Ex parte Read* (1888) 13 PD 221, PC; *Read v Bishop of Lincoln* (1889) 14 PD 88; *Read v Bishop of Lincoln* [1891] P 9; on appeal [1892] AC 644, PC.

7 Ecclesiastical Jurisdiction Measure 1963, s 82 (1). As to the former power to cite persons for heresy, see the Ecclesiastical Jurisdiction Act 1531, s 2 (repealed); Church Discipline Act 1840, s 19 (repealed). As to heresy as an ecclesiastical offence, see PARA 1354 post.

8 Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (a). The courts of audience were provincial courts which had long since fallen into abeyance: see Phillimore, *Ecclesiastical Law* (2nd Edn) 922, 923.

9 Ecclesiastical Jurisdiction Measure 1963, ss 82 (2) (a), 83. Archdeacons' courts, formerly of considerable importance, had virtually ceased to perform any functions apart from visitations. The visitatorial powers of archdeacons are not affected by the Measure (see s 83 (2) (e), and PARA 500 ante); there is a saving also in respect of the official principal whom an archdeacon was by custom generally entitled to appoint to preside in his court (see s 83 (2) (f), and PARA 1273 note 11 post).

10 Ibid s 82 (2) (b). As to the Arches and Chancery Courts, which continue as appellate courts, see PARAS 1285, 1287 post.

11 Ibid s 82 (2) (c). This provision would seem to apply to any proceedings against lay officers which are (in a wide sense) of a disciplinary nature; eg proceedings for the removal from office of a churchwarden on the ground of misconduct: see PARA 547 ante. Jurisdiction in respect of ecclesiastical offences by lay persons in general has, in effect, been abolished by other provisions of the Measure: see PARA 1351 post.

12 Ibid s 82 (2) (c). As to the courts' present jurisdiction, see PARA 1284 post. As to perturbation of seat, see PARA 555 ante.

13 'Mortuaries' or 'corse-presents' were oblations or gifts to the parish church, which were originally required at the time of a person's death: see Phillimore, *Ecclesiastical Law* (2nd Edn) 685.

14 'Synodals' were payments due to a bishop from his clergy, usually on the occasion of a synod or visitation: Ayl Par 433.

15 See PARA 491 note 10 ante.

16 'Pentecostals' or 'Whitsun-farthings' were oblations associated with the duty of attendance at the cathedral as the mother church of the diocese: see Phillimore, *Ecclesiastical Law* (2nd Edn) 1244.

17 Ecclesiastical Jurisdiction Measure 1963, s 82 (3).

18 Ibid s 82 (4). As to excommunication, see PARA 1384 post.

19 Ibid s 83 (2) (a). As to the royal supremacy, see PARA 352 et seq ante.

20 Ibid s 83 (2) (b): see PARA 464 ante.

21 Ibid s 83 (2) (c): see PARA 1267 et seq post.

22 Ibid s 83 (2) (d). As to vicars-general of provinces and dioceses, see PARA 430 note 3 ante, 1275 note 1 post, respectively.

23 Ibid s 83 (2) (e): see PARA 500 ante.

24 Ibid s 83 (2) (f): see note 9 supra.

25 Ibid s 83 (2) (g). As to the Master of the Faculties, see PARA 1286 post.

26 See *ibid* s 87, Sch. 5.

27 Ibid s 87.

UPDATE

1266 The Ecclesiastical Jurisdiction Measure 1963

NOTE 1--1963 Measure s 88 repealed: Statute Law (Repeals) Act 2004.

TEXT AND NOTES 5-17--1963 Measure s 82 repealed: 2004 Act.

NOTE 9--The office of official principal has been abolished: Ecclesiastical Judges and Legal Officers Measure 1976 s 7.

TEXT AND NOTES 19-25--The 1963 Measure s 83(2) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(ii) Status and Scope of Ecclesiastical Jurisdiction/1267. Status of ecclesiastical courts.

(ii) Status and Scope of Ecclesiastical Jurisdiction

1267. Status of ecclesiastical courts.

Although the former jurisdiction of the ecclesiastical courts has been much reduced¹ they remain, within the sphere of their jurisdiction, as unfettered as is the High Court in temporal causes². Accordingly an order of certiorari does not lie from the High Court to an ecclesiastical court³. In appropriate cases, however, the High Court may exercise a measure of control over ecclesiastical courts by orders of prohibition and mandamus⁴.

¹ See PARA 1264 ante.

² *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex parte White* [1947] KB 263, [1946] 2 All ER 604; affd. [1948] 1 KB 195, [1947] 2 All ER 170, CA. As to the binding force of precedent in the ecclesiastical courts, see PARA 1271 post.

³ *R v Chancellor of St Edmundsbury and Ipswich Diocese, ex parte White* [1948] 1 KB 195, [1947] 2 All ER 170, CA, where it was held that the absence of any precedent for the issue of an order of certiorari to a consistory court justified refusal to make such an order. Ecclesiastical courts are not inferior courts in the sense that the Divisional Court can treat them as such for the purpose of examining their records, and the reason certiorari has never issued is that it would otherwise remove into the Queen's Bench Division proceedings not capable of being determined there: see **JUDICIAL REVIEW** vol 61 (2010) PARA 697. As to the distinction between superior and inferior courts, see **COURTS** vol 10 (Reissue) PARA 309.

⁴ See PARAS 1268, 1269 post. See also the Ecclesiastical Jurisdiction Measure 1963, s 83 (2) (c), and PARA 1266 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(ii) Status and Scope of Ecclesiastical Jurisdiction/1268. Prohibition.

1268. Prohibition.

If an ecclesiastical court exceeds its jurisdiction and powers by misconstruing a statute¹, or by hearing or determining a question of a freehold or other legal right², or any other matter which is not within its jurisdiction³, or by hearing or determining a matter according to rules which are contrary to the common law of the realm⁴, or by violating the rules of natural justice⁵, it is liable to be restrained from proceeding in the matter⁶ by a prohibition issuing out of the High Court of Justice⁷. It seems that all ecclesiastical courts and appellate bodies, including the Judicial Committee of the Privy Council when exercising its jurisdiction in an ecclesiastical suit, are probably liable to prohibition⁸.

Prohibition is never granted where the ecclesiastical court has clear jurisdiction unless the court is proceeding in a manner contrary to the principles of the common law⁹, nor will it issue where the court has committed an irregularity or error in a matter of practice or a mistake in judgment in a case in which it has jurisdiction¹⁰. Further, it will not be granted where one object of the suit is within the jurisdiction of the ecclesiastical court since it is to be presumed that the court will not exceed its jurisdiction¹¹. Again, if in a suit within the cognisance of the ecclesiastical court a temporal matter incidentally arises, that court has a right to determine it and no prohibition goes¹².

In restraining excess of jurisdiction in the ecclesiastical courts the temporal courts are not bound by a decision of even the highest court of appeal in ecclesiastical matters¹³. An order of prohibition can be applied for even after sentence¹⁴, but the order will not be granted on such an application unless the sentence was clearly founded on matters not within the court's jurisdiction¹⁵.

1 *Bishop of Winchester's Case* (1596) 2 Co Rep 38 a; *Carter v Crawley* (1680) T Raym 496; *Gould v Gapper* (1804) 5 East 345.

2 *Corven's Case* (1612) 12 Co Rep 105 at 106; 3 Co Inst 202; *Byerley v Windus* (1826) 5 B & C 1; *Re Bateman* (1870) LR 9 Eq 660; *Stileman-Gibbard v Wilkinson* [1897] 1 QB 749.

3 *R v Twiss* (1869) LR 4 QB 407; *R v Tristram* [1898] 2 QB 371 at 374, 378; *R v Tristram* (1899) 80 LT 414; *R v Tristram* [1902] 1 KB 816, CA. A suit cannot be maintained in the ecclesiastical courts for the abstraction of title deeds kept in a church: *Gardner v Parker* (1791) 4 Term Rep 351. Prohibition goes where the ecclesiastical court assumes to try the question of custom or no custom (*Rhodes v Oliver* (1836) 2 Har & W 38), unless the court has decided it in accordance with the common law (*Churchwardens of Market Bosworth v Rector of Market Bosworth* (1699) 1 Ld Raym 435). However, it is thought that it would probably be within the jurisdiction of an ecclesiastical court to try a question as to the existence of a custom regulating the number of churchwardens or the manner in which they are chosen: see PARA 543 ante. The fact constituting the excess of jurisdiction must appear on the pleadings or in the proceedings in the ecclesiastical court: *Stroud v Hoskins* (1630) Cro Car 208; *Johnson v Oldham* (1700) 1 Ld Raym 609; *Paxton v Knight* (1757) 1 Burr 314; *Blunt v Harwood* (1838) 8 Ad & El 610.

4 *Tey v Cox* (1613) 2 Brownl 35; *Veley v Burder* (1841) 12 Ad & El 265 at 312, Ex Ch.

5 *R v North, ex parte Oakey* [1927] 1 KB 491, CA, where it was held that an order to pay costs cannot be made against one who has not been specially cited to appear: see PARA 1323 post. As to these rules, see JUDICIAL REVIEW vol 61 (2010) PARA 629 et seq.

6 A common law action also lies against the bishop or chancellor and damages may be recovered: see *Beaurain v Scott* (1812) 3 Camp 388 (action for unlawful excommunication, as to which see PARA 1384 post); *Ackerley v Parkinson* (1815) 3 M & S 411.

7 Ecclesiastical Jurisdiction Measure 1963, s 83 (2) (c); see also s 87, Sch. 5, as to the repeal of 18 Edw. 1 (Writ of Consultation) (1289), which originally provided this power. See further Ayl Par 434 et seq, Com Dig, Prohibition (F 4); *Veley v Burder* (1841) 12 Ad & El 265 at 311, 312, Ex Ch; *Mackonochie v Lord Penzance* (1881) 6 App Cas 424, HL. As to prohibition generally, see **JUDICIAL REVIEW** vol 61 (2010) PARA 699 et seq.

8 *Ex parte Smyth* (1835) 3 Ad & El 719; *Chesterton v Farlar* (1838) 7 Ad & El 713; *Rackham v Bluck* (1846) 9 QB 691. The question was raised in *Mackonochie v Lord Penzance* (1881) 6 App Cas 424, HL, but Lord Blackburn alone pronounced specifically in favour of prohibition. Cf. *Combe v Edwards* (1878) 3 PD 103 at 119, per Lord Penzance.

9 Com Dig, Prohibition (G 22); *Ex parte Story* (1852) 12 CB 767 at 777, per Talfourd J; on appeal 8 Exch 195.

10 *Ex parte Smyth* (1835) 3 Ad & El 719; *Ex parte Smyth* (1835) 2 Cr M & R 748, Ex Ch; *Jolly v Baines* (1840) 12 Ad & El 201; *Rackham v Bluck* (1846) 9 QB 691; *Ex parte Story* (1852) 12 CB 767; on appeal 8 Exch 195; *Mackonochie v Lord Penzance* (1881) 6 App Cas 424, HL. Parties cannot be restrained by injunction from applying to the ecclesiastical court, since such a proceeding would virtually prohibit the Ordinary from exercising jurisdiction without giving him the opportunity of being heard: *Proud v Price* (1893) 69 LT 664 at 665, CA, per Lord Esher MR.

11 *Hallack v Cambridge University* (1841) 1 QB 593; *R v Twiss* (1869) LR 4 QB 407.

12 Com Dig, Prohibition (G 23).

13 *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 447, HL, per Lord Blackburn.

14 *Shotter v Friend* (1690) 2 Salk 547; *Gould v Gapper* (1804) 5 East 345.

15 *Hart v Marsh* (1836) 5 Ad & El 591.

UPDATE

1268 Prohibition

TEXT AND NOTE 7--1963 Measure s 83(2) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(ii) Status and Scope of Ecclesiastical Jurisdiction/1269. Mandamus.

1269. Mandamus.

Where an ecclesiastical court declines to exercise jurisdiction in a case in which it ought to do so, it may be compelled by mandamus to take cognisance of the case¹.

¹ *R v Archbishop of Canterbury* (1856) 6 E & B 546; *R v Arches Court Judge* (1857) 7 E & B 315. As to the remedy by prerogative order of mandamus, see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq. Cf. *R v Bishop of London* (1889) 24 QBD 213, CA; affd. sub nom. *Allcroft v Lord Bishop of London*, *Lighton v Lord Bishop of London* [1891] AC 666, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(ii) Status and Scope of Ecclesiastical Jurisdiction/1270. Scope of ecclesiastical jurisdiction.

1270. Scope of ecclesiastical jurisdiction.

The present jurisdiction of the ecclesiastical courts is limited to (1) protecting land consecrated to ecclesiastical purposes and everything on or in such land by the grant or refusal of faculties to authorise works in connection with it¹, and by making appropriate orders against persons who execute any such works without a faculty²; (2) adjudicating upon and enforcing some other civil rights in connection with ecclesiastical business and property³; and (3) enforcing the discipline of the clergy⁴.

The jurisdiction of ecclesiastical courts does not, of course, embrace the whole range of ecclesiastical law, part of which falls to be enforced by the temporal courts⁵. Among the matters dealt with by the temporal courts are appeals relating to clergy pensions⁶, certain proceedings where a bishop refuses to admit to a benefice⁷, proceedings to enforce a liability to repair a chancel⁸, and proceedings to enforce an order relating to the deposit of parochial registers and records⁹. Subject matter is, however, no certain test in ascertaining what is the appropriate procedure for enforcement¹⁰. The temporal courts may exercise certain supervisory jurisdiction over ecclesiastical courts and officers¹¹, and on a matter of ecclesiastical law a temporal court is not bound by the decision of the highest ecclesiastical court¹². The temporal courts will, however, be slow to intervene in an ecclesiastical matter in which the ecclesiastical courts have jurisdiction¹³.

1 See PARA 1306 et seq post.

2 See the Faculty Jurisdiction Measure 1964, s 5 (which provides for an order to be made for a party in breach to pay costs), and PARA 1328 post.

3 See PARA 1342 et seq post.

4 See PARA 1350 et seq post. The Ecclesiastical Jurisdiction Measure 1963 applies to vicars in a team ministry (see PARA 871 ante) as if they were incumbents of the benefice of the area of which the team ministry is established: Pastoral Measure 1968, s 19 (8).

5 For a discussion of the distinction between that part of ecclesiastical law which is enforced by the ecclesiastical courts and that part which is enforced by the temporal courts, see *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239 at 244, 245, [1945] 1 All ER 479 at 483, 484, per Uthwatt J; and see *Caudrey's Case* (1591) 5 Co Rep 1a, and 60 LQR 235.

6 See the Clergy Pensions Measure 1961, s 38 (3), and PARA 753 ante.

7 *Re* actions in the nature of *quare impedit*: see the Benefices Act 1898, s 3, and PARA 822 ante.

8 See the Chancel Repairs Act 1932, s 3, and PARA 1106 ante.

9 See the Parochial Registers and Records Measure 1929, s 10, and PARA 1118 ante.

10 *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239 at 245, [1945] 1 All ER 479 at 484.

11 *Eg* by prohibition or mandamus: see PARAS 1268, 1269 ante.

12 *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 431, 447, 460, HL.

13 *A-G v Dean and Chapter of Ripon Cathedral* [1945] Ch 239, [1945] 1 All ER 479.

UPDATE

1270 Scope of ecclesiastical jurisdiction

NOTE 4--The 1963 Measure similarly applies to deacons in a team ministry to whom the 1983 Measure s 20(3A) (see PARA 870) applies: see now the Pastoral Measure 1983 s 20(9), amended by the Team and Group Ministries Measure s 1(8).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(1) THE ECCLESIASTICAL JUDICIAL SYSTEM/(ii) Status and Scope of Ecclesiastical Jurisdiction/1271. The binding force of precedent.

1271. The binding force of precedent.

The doctrine of the binding force of precedent¹ came to be fully accepted in English ecclesiastical law in the nineteenth century², and statutory recognition of the doctrine is to be found in the Ecclesiastical Jurisdiction Measure 1963³. The extent and effect of its application to decisions of the new courts created by that Measure remain to be worked out in practice⁴, but certain general propositions can be formulated, and instances can be given of certain specific applications of the doctrine for which warrant already exists.

In general, courts are bound to follow decisions on questions of law given by higher courts, namely by courts exercising a superior jurisdiction in the area concerned. Thus decisions of the Arches Court of Canterbury and the Chancery Court of York are binding on consistory courts in the provinces of Canterbury and York respectively⁵. The Arches and Chancery Courts in their turn are bound by any applicable decisions of the Judicial Committee of the Privy Council⁶.

A decision given by a court of co-ordinate jurisdiction, although it may be of great persuasive value, has no binding force. Thus a decision of the Arches Court does not bind the Chancery Court, nor vice versa; and a consistory court is not bound by a decision of the consistory court of another diocese⁷.

Where an earlier decision of the same court is cited as a precedent there may be some uncertainty as to its binding effect. Where the court concerned is a final court of appeal, the rule of stare decisis may occasionally be relaxed. Thus the Privy Council has been prepared in appropriate cases to examine the reasons for a previous decision and to give effect to a different view of the law⁸. It has been suggested that a similar latitude would be allowable in the Arches Court or the Chancery Court⁹. If that is correct, it is hard to see why the judge of a consistory court (which is a court of first instance only) should be denied the right to reconsider a question of law decided previously in the same court¹⁰, but hitherto the consensus of judicial opinion seems to have been against the existence of such a right¹¹.

The Ecclesiastical Jurisdiction Measure 1963 declares that in relation to matters of doctrine, ritual and ceremonial neither the Court of Ecclesiastical Causes Reserved nor a Commission of Review is bound by any decision of the Judicial Committee of the Privy Council¹². It is also provided that a decision of a previous Commission of Review will be binding on a commission subsequently appointed in any matter within the jurisdiction of that commission except in regard to a matter on which new information or evidence is adduced which was not before the commission on the previous occasion¹³.

1 As to the doctrine of the binding force of precedent as applied in the civil courts, see Cross, *Precedent in English Law* (2nd Edn), and see PARAS 955-958 ante. There is reason to think that cases cited as authorities in writings on ecclesiastical law have sometimes been given undue weight, partly through failure to observe the distinction between the ratio decidendi and an obiter dictum, and partly because the decision of a single court of first instance has been treated as establishing a rule of general application.

2 Among the factors held to have contributed to this development were the influence of Sir William Scott (Lord Stowell), the systematic reporting of ecclesiastical cases, the substitution in 1832 of the Judicial Committee of the Privy Council for the High Court of Delegates as the final court of appeal in ecclesiastical matters, and (especially after the dissolution of Doctors' Commons under the Court of Probate Act 1857: see PARA 1298 note 1 post) the growing influence of common lawyers at the expense of those who had been trained according to the tradition of the civil and canon laws (see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 13, 27, 28; Kemp, *An Introduction to Canon Law in the Church of England* (1957) 73 et seq.). See also PARA 1264 ante.

3 Ecclesiastical Jurisdiction Measure 1963, ss 45 (3), 48 (5), (6): see notes 12, 13 *infra*.

4 An example of a novel question which might arise would be whether a decision of the Court of Ecclesiastical Causes Reserved, sitting as a court of first instance for the trial of a person charged with an offence involving matter of doctrine, ritual or ceremonial, would be binding on a consistory court in a faculty case involving matter of doctrine etc. in which appeal would lie to the Court of Ecclesiastical Causes Reserved in its capacity as an appellate court. See also note 6 *infra*. As to the courts mentioned in this note, see PARA 1272 *et seq* post.

5 In *Stephenson v Langston* (1804) 1 Hag Con 379 at 381, Sir William Scott described a decision of the Arches Court as binding on the Consistory Court of London, adding that if it was not thought founded on law it must be set right by the superior court. In *Re St Mary, Tyne Dock* (No. 2) [1958] P 156 at 159, [1958] 1 All ER 1 at 8, 9, Deputy Chancellor Wigglesworth (later Dean of the Arches) observed that a judgment of the Arches Court of Canterbury is not a binding authority in the province of York but is naturally treated with the greatest respect, in particular because the judge of the two provincial courts is required by statute to be the same person: see PARA 1286 post.

6 There are many reported decisions of the Privy Council (given before the commencement of the Ecclesiastical Jurisdiction Measure 1963) relating to matters of doctrine, ritual and ceremonial, in respect of which the Privy Council no longer has jurisdiction: see PARA 1288 post. Such decisions are not binding on the Court of Ecclesiastical Causes Reserved or on a Commission of Review (ss. 45 (3), 48 (5)), but this exemption does not extend to the consistory courts, and it seems that in strict law they are not relieved of the obligation to follow Privy Council decisions when dealing with matters of doctrine, ritual or ceremonial which arise in faculty cases. The Arches and Chancery Courts no longer have jurisdiction in cases involving such matters, but they are empowered to hear faculty appeals not involving such matters (with the possibility of further appeal to the Privy Council): ss 7 (1), 8 (1) (see PARAS 1287, 1288 post). In addition they have the functions of a final court of appeal in disciplinary proceedings against priests and deacons not involving matters of doctrine etc. (see PARA 1370 post) and in certain other proceedings (see PARA 1287 post); and a question might be raised whether, when thus acting as final courts of appeal, they are bound by decisions of the Privy Council as a higher court.

7 See the observations of Chancellor Garth Moore in *Rector and Churchwardens of Bishopwearmouth v Adey* [1958] 3 All ER 441 at 445, 446, [1958] 1 WLR 1183 at 1189, and in *Re Rector and Churchwardens of St Nicholas, Plumstead* [1961] 1 All ER 298 at 299, [1961] 1 WLR 916 at 918.

8 *Read v Bishop of Lincoln* [1892] AC 644 at 654, 655, PC; see also *Ridsdale v Clifton* (1877) 2 PD 276, PC. It was recognised that any such discretion must be exercised in a manner consistent with respect for interests in property etc. acquired in reliance on the previous decision. Cf. the provisions of the Ecclesiastical Jurisdiction Measure 1963, s 48 (6): see PARA 1292 post. See also PARA 956 ante.

9 See *Re Lapford (Devon) Parish Church* [1955] P 205, [1954] 3 All ER 484, CA, an appeal from the Exeter Consistory Court, where Chancellor Wigglesworth had held that he was constrained by a decision of the Arches Court to refuse a faculty which he would otherwise have had no hesitation in granting. In the appeal proceedings the Dean of the Arches (Sir Philip Baker-Wilbraham), in discussing the question of re-opening previous decisions of ecclesiastical courts, expressed the opinion that he was less strictly bound (sc. than the chancellor) and that some latitude might be allowable, although strong reason would be needed to justify him in departing from his predecessor's decision. In the event the appeal was dismissed.

10 It is perhaps relevant to point out that in the High Court a judge is not bound by the decision of another judge (past or present) of that court.

11 In *Grosvenor Chapel, South Audley Street* (1913) 29 TLR 286, Chancellor Kempe, in the Consistory Court of London, considered himself bound by a decision given by a predecessor in the same court (Chancellor Tristram), although he did not agree with it. In *Re Rector and Churchwardens of St Nicholas, Plumstead* [1961] 1 All ER 298, [1961] 1 WLR 916, Chancellor Garth Moore, adjudicating on a similar matter, in respect of which he shared the view of Chancellor Kempe, considered that he was not bound by the decision of Chancellor Tristram because it was given in a different consistory court: cf. note 7 *supra*.

12 Ecclesiastical Jurisdiction Measure 1963, ss 45 (3), 48 (5). This seems to leave open the question whether decisions of the Privy Council respecting other matters are binding on these courts or either of them. For an indication of the reasons for this provision, see PARA 1265 ante.

13 *Ibid* s 48 (6). This provision would appear to be more restrictive in its effect than the current practice of the House of Lords, for which see *Note* [1966] 3 All ER 77, [1966] 1 WLR 1234, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(i) In general/1272. Courts exercising jurisdiction under the Ecclesiastical Jurisdiction Measure 1963.

(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS

(i) In general

1272. Courts exercising jurisdiction under the Ecclesiastical Jurisdiction Measure 1963.

Provision is made in the Ecclesiastical Jurisdiction Measure 1963 for a number of courts constituted on a permanent basis. These are (1) a consistory court for each diocese¹, (2) a court for each of the two provinces, called the Arches Court of Canterbury and the Chancery Court of York respectively², (3) Her Majesty in Council³, and (4) the Court of Ecclesiastical Causes Reserved⁴. The Measure also provides for the appointment, when required, of (a) a commission appointed by the Upper House of the convocation of the relevant province or by the Upper Houses of the Convocations of both provinces⁵, and (b) a Commission of Review appointed by Her Majesty⁶.

1 See PARA 1274 et seq post.

2 See PARA 1285 et seq post.

3 See PARA 1288 post.

4 See PARAS 1289, 1290 post.

5 See PARA 1291 post.

6 See PARA 1292 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(i) In general/1273. Other courts.

1273. Other courts.

The Benefices Act 1898 provides for the hearing of appeals against a bishop's refusal (otherwise than on the grounds of doctrine or ritual) to institute or admit a presentee to a benefice by a court consisting of the archbishop of the relevant province and a judge of the Supreme Court nominated by the Lord Chancellor¹. If the issue is an archbishop's right to refuse to institute or admit, the court is constituted of the other archbishop and the judge². The court is a court of record and is held in public³. It has the same powers as the High Court has of administering oaths, requiring the attendance of witnesses and the production of documents and as to the payment and recovery of costs⁴.

The Pastoral Measure 1968 provides for the constitution and jurisdiction of an appeal tribunal for each of the two provinces, having jurisdiction in cases concerning compensation payable to the clergy for loss suffered in consequence of pastoral reorganisation⁵.

The Court of Faculties⁶ of the Archbishop of Canterbury⁷ has jurisdiction over the appointment and removal of notaries public⁸ and the issuing of such faculties and licences as the archbishop can grant in the province of York as well as in his own province⁹. The officer who presides over it is called the Master of the Faculties, and is the same individual as the Dean of the Arches¹⁰.

Archdeacons' courts have been abolished¹¹.

1 See the Benefices Act 1898, s 3 (1) PARAS 600, 820, 821 ante, 1342, 1345 post.

2 Ibid s 3 (6).

3 Ibid s 3 (1). The court fees are paid over to the Church Commissioners' general fund (as to which see PARA 1234 ante), and out of that fund the commissioners defray the court's expenses: see s 11.

4 Ibid s 3 (3).

5 See the Pastoral Measure 1968, s 25, Sch. 4 para 14, and PARA 890 ante.

6 The word 'faculty' signifies a privilege or special dispensation granted to a person by favour and indulgence to do that which by the law he cannot do: *Termes de la Ley* 324.

7 4 Co Inst 337; 2 Burn's Ecclesiastical Law (4th Edn) 261, 1; *Re Champion* [1906] P 86; *Bennetts v Chilcott* (1906) Times, 27th October; *Hall v Winder* (1906) Times, 27th October. The origin of the jurisdiction is apparently to be found in the transfer of legatine powers to the Archbishop of Canterbury by the Ecclesiastical Licences Act 1533. This transfer is also the origin of the Lambeth degrees, as to which see PARA 433 note 5 ante.

8 Ayl Par 384; 3 Burn's Ecclesiastical Law (4th Edn) 2; Public Notaries Act 1801; Public Notaries Act 1843; see Phillimore, *Ecclesiastical Law* (2nd Edn) 945 et seq, and LEGAL PROFESSIONS.

9 4 Co Inst 337; *Prince Capua v Count De Ludolf* (1836) 30 LJPM & A 71n. See also the Revised Canons Ecclesiastical, Canon C17 para 7, and PARA 433 ante.

10 4 Co Inst 337; 3 Burn's Ecclesiastical Law (4th Edn) 2.

11 Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (a). However, nothing in the Measure affects the visitatorial powers of archdeacons (see PARA 500 ante) or the mode of appointment, office and duties of the official principal of an archdeacon: s 83 (2) (f). Archdeacons' courts, though formerly of considerable importance, had practically fallen into abeyance, partly owing to the withdrawal of many matters from ecclesiastical jurisdiction (see PARA 1264 ante), and partly because the courts had concurrent jurisdiction with consistory courts, to which an appeal usually lay. Archdeacons were by custom generally entitled to appoint an

archdeacon's official principal to preside for them in court: see 1 Burn's Ecclesiastical Law (4th Edn) 97. See also PARA 1266 note 9 ante.

UPDATE

1273 Other courts

TEXT AND NOTE 1--Appeal is now to the archbishop and the Dean of the Arches and Auditor: Benefices Act 1898 s 3(1) (amended by the Patronage (Benefices) Measure 1986 s 18(1)(a)).

TEXT AND NOTE 2--See now Benefices Act 1898 s 3(6) (as amended: see PARA 821).

TEXT AND NOTE 3--Section 3(1) replaced by s 3(2) (substituted by the 1986 Measure s 18(1)(b)), providing that any proceedings on an appeal must be held in public and any party to such proceedings is entitled to appear by counsel or a solicitor.

NOTE 3--The Patronage (Appeals) Committee constituted under the 1986 Measure Sch 1 has made rules (1) prescribing anything to be prescribed under the 1898 Act, (2) regulating the procedure and practice on or in connection with proceedings on an appeal under s 3 or the Benefices Measure 1972 s 1(2), including rules regulating matters relating to costs, fees and expenses in respect of any such proceedings: Benefices Act 1898 s 11 (substituted by the Benefices (Institution Appeals) Rules 1988, SI 1988/1996; and amended by the Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 3). The Benefices Rules 1899, SR & O 1899/141 are replaced.

TEXT AND NOTE 4--Section 3(2), (3) substituted by s 3(2); *ibid* s 18(1)(b), which does not reproduce s 3(3).

TEXT AND NOTE 5--Now Pastoral Measure 1983; see s 26(1), Sch 4 para 15; Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 23. 1983 Measure s 26(1) (as renumbered by the Team and Group Ministries Measure 1995 s 4) and Sch 4 now have effect in relation to a deacon to whom the 1983 Measure s 20(3A) (see PARA 870) applies as they have effect in relation to a vicar in a team ministry: s 26(2), as added. The 1983 Measure Sch 4 applies to any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003: 2003 Measure s 41.

TEXT AND NOTE 11--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

NOTE 11--The office of official principal has been abolished: Ecclesiastical Judges and Legal Officers Measure 1976 s 7. The 1963 Measure s 83(2) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1274. The court of the diocese.

(ii) Consistory Courts

1274. The court of the diocese.

For each diocese¹ there is a court of the bishop² which is called the consistory court³ (except in the diocese of Canterbury, where it is called the commissary court) of the diocese⁴. The judge of the court is styled the chancellor (or in the diocese of Canterbury the commissary general) of the diocese⁵.

1 'Diocese' means a diocese in the province of Canterbury or a diocese (other than Sodor and Man) in the province of York: Ecclesiastical Jurisdiction Measure 1963, s 66 (1). For the purposes of the Measure an extra-diocesan place (including any place exempt or peculiar other than a royal peculiar) which is surrounded by a diocese is deemed to be situate within that diocese, and an extra-diocesan place which is surrounded by two or more dioceses is deemed to be situate within such one of them as the relevant archbishop may direct: s 66 (3).

2 In relation to the diocese of an archbishop 'bishop' means archbishop: Interpretation Measure 1925, s 3. During a vacancy in a see the court's jurisdiction is unaffected: see PARA 1277 note 4 post.

3 The name is derived from the time when the bishop presided in the court with some of his clergy as assessors and assistants: 2 Burn's Ecclesiastical Law (4th Edn) 12.

4 Ecclesiastical Jurisdiction Measure 1963, s 2 (1); Revised Canons Ecclesiastical, Canon G 1 para 1. Subsequent references in this title to a consistory court include, unless the context otherwise requires, references to the commissary court of Canterbury: see s 66 (2); Interpretation Measure 1925, s 3. As to the jurisdiction of consistory courts, see PARA 1284 post.

5 Ecclesiastical Jurisdiction Measure 1963, s 2 (1); Revised Canons Ecclesiastical, Canon G 2 para 1. Subsequent references in this title to a chancellor include, unless the context otherwise requires, references to the commissary general of the diocese of Canterbury: Ecclesiastical Jurisdiction Measure 1963, s 66 (2); Interpretation Measure 1925, s 3.

UPDATE

1274 The court of the diocese

Reference to 1963 Measure s 2(1) should be to s 1(1) (amended by the Clergy Discipline Measure 2003 Sch 1 para 2). See PARA 1284.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1275. The office of chancellor.

1275. The office of chancellor.

As judge of the consistory court the chancellor acts in the capacity of official principal¹ of the bishop, who appoints him to the office by letters patent². Although the power of nomination and appointment resides in the bishop³, the chancellor's authority is derived from the law⁴. He is a Queen's judge, in one of the Queen's courts. He acts in the court as an Ordinary⁵, that is to say, as an independent judge, uncontrolled by the bishop, and with no special instructions from him⁶. There is no appeal from the chancellor to the bishop⁷. The chancellor, being a judge independent of the bishop, may hear and determine in the consistory court a cause in which the bishop is himself interested⁸.

The processes of the consistory court generally run in the name of the bishop of the diocese; they may, however, run in the name of the chancellor as official principal of the bishop. In either case they are issued under the chancellor's seal⁹.

1 Ecclesiastical Jurisdiction Measure 1963, s 13 (2). The person holding the office of chancellor is also vicar-general of the diocese. As to the historical distinction between the offices of official principal and vicar-general, see Phillimore, *Ecclesiastical Law* (2nd Edn) 928. Like an archdeacon, he is *oculus episcopi*: Godolphin's Repertorium Canonicum 85. As vicar-general the chancellor has certain functions in non-contentious matters, eg the granting of marriage licences, in respect of which he may act through a deputy, who is called a surrogate (see PARA 1024 ante), and the admission of churchwardens in the year of the bishop's visitation (see PARA 546 note 1 ante). See also Ayl Par 160; *Thorpe v Mansell* (1810) 1 Hag Con 4n. As to provincial vicars-general, see PARA 430 note 3 ante.

The chancellor is an *ex officio* member of the diocesan synod (see PARAS 505, 506 ante), and is the principal lay officer of the diocese. He frequently acts as the bishop's adviser when legal or other questions arise in the administration of the diocese, although in the first instance these are generally referred to and dealt with by the diocesan registrar (see PARA 1281 post) or the bishop's legal secretary (see PARA 1281 note 2 post); in many cases he also advises the clergy of the diocese: *Opinions of the Legal Board* (5th Edn 1973) III/13.

2 Ecclesiastical Jurisdiction Measure 1963, s 2 (1). See *Ex parte Medwin* (1853) 1 E & B 609 at 616. The form and contents of the chancellor's patent vary in different dioceses: see PARA 1278 post.

3 If the bishop will not choose a chancellor then the archbishop may and ought to do so: Ayl Par 161; *Ex parte Medwin* (1853) 1 E & B 609 at 616; *Dr Sutton's Case* (1627) Litt 22. See also *R v Tristram* [1902] 1 KB 816, CA.

4 Godolphin's Repertorium Canonicum 81. The relevant law is now to be found principally in the Ecclesiastical Jurisdiction Measure 1963.

5 *Ex parte Medwin* (1853) 1 E & B 609 at 616. An Ordinary is so called in ecclesiastical law *quia habet ordinariam jurisdictionem in jure proprio et non per deputationem*: Co Litt 96a. The word is derived from the civil law. For its application to the bishop of the diocese, see PARA 458 ante.

6 *Ex parte Medwin* (1853) 1 E & B 609 at 615, 616. As to the bishop's right to sit in the consistory court in certain instances, see PARA 1278 post.

7 Ayl Par 163; *Ex parte Medwin* (1853) 1 E & B 609 at 615.

8 *Bishop of Lincoln v Smith* (1668) 1 Vent 3; *Ex parte Medwin* (1853) 1 E & B 609 at 616, 617. In a case in which the bishop is interested he may guarantee the costs and may obtain costs: *Ex parte Medwin* supra at 613.

9 Gib Cod 986.

UPDATE

1275 The office of chancellor

TEXT AND NOTE 2--Before appointing a person to be chancellor of a diocese the bishop must consult the Lord Chancellor and the Dean of Arches and Auditor: 1963 Measure s 2(1A); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1276. Qualifications of chancellor.

1276. Qualifications of chancellor.

A person appointed¹ to be chancellor of a diocese must be at least thirty years old and either a barrister of at least seven years' standing or a person who has held high judicial office². Before appointing a layman³ the bishop⁴ must satisfy himself that the person to be appointed is a communicant⁵. The chancellor must, before entering on the execution of his office, take and subscribe the oath of allegiance⁶ and the appropriate judicial oath⁷, either before the diocesan bishop in the presence of the diocesan registrar⁸ or in open court in the presence of that registrar, and if he is a layman he must also make and subscribe, in the same circumstances, the appropriate declaration of assent⁹. The diocesan registrar must record the taking and subscription of the oaths¹⁰.

1 For a saving in respect of judges and registrars of ecclesiastical courts already in office on 1st March 1965, see PARA 1277 note 1 post.

2 Ecclesiastical Jurisdiction Measure 1963, s 2 (2); Revised Canons Ecclesiastical, Canon G2 para 2. 'High judicial office' has the meaning assigned to it by the Appellate Jurisdiction Act 1876, s 25 (ie the office of Lord Chancellor, member of the Judicial Committee of the Privy Council, Lord of Appeal or judge of the Supreme Court): Ecclesiastical Jurisdiction Measure 1963, s 66 (1). Previously an ecclesiastical judge, while not necessarily a member of the legal profession, was required to be 'learned in the civil and ecclesiastical laws and at the least a master of arts or bachelor of law, and reasonably well practised in the course thereof': Canons Ecclesiastical (1603) 127 (revoked). As to the history of the appointment and qualifications of ecclesiastical judges, see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 9-13.

3 In pre-Reformation times the chancellor was always in orders, although not necessarily a priest. At the Reformation laymen became qualified to hold office: see PARA 1261 ante. In spite, however, of the fact that membership of Doctors' Commons was confined to laymen (*R v Archbishop of Canterbury* (1807) 8 East 213), clergymen were still often appointed to chancellorships (see PARA 1278 note 1 post). In view of the qualifications now required (see the text to note 2 supra) it seems likely that the number of clerical chancellors will remain comparatively small, notwithstanding the fact that a barrister may now be in holy orders. The former requirement of the Consolidated Regulations of the Inns of Court 1955, regs. 9, 41, that a student before being called to the Bar should declare that he was not (inter alia) in holy orders has been abolished. As to the modern call declaration, see LEGAL PROFESSIONS vol 66 (2009) PARA 1077.

4 During a vacancy in the see anything required or authorised by the Ecclesiastical Jurisdiction Measure 1963 to be done by, to or before a bishop must be done or, as the case may be, may be done by, to or before the guardian of the spiritualities (s. 68 (1)) or, where a dean and chapter are guardian, by, to or before a commissary appointed by the dean and chapter for the purpose (s. 68 (2)), although s 68 (2) does not apply to anything required or authorised to be done by virtue of s 23 (1) (a) or s 46 (1) proviso (see s 68 (3)). In s 68 (3) the Measure in fact refers to 'paragraph (a) of subsection (1) of section twenty' (which does not exist): it is submitted that s 23 (1) (a) is intended. For s 23 (1) (a), see PARA 1363 post; for s 46 (1) proviso, see PARA 1278 post.

5 Ibid s 2 (2). 'Communicant' means a person who has received communion according to the use of the Church of England, or of a church in communion with it, at least once within the twelve months preceding the date of his declaration that he fulfils that requirement or (if a declaration is not required of him) the date upon which he is offered the appointment or requested to act in a capacity for which that qualification is required: s 66 (1).

6 Ie 'I, (name), do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her Heirs and successors, according to law. So help me God': ibid s 2 (5) (a) Sch. 1, Part I.

7 Ie 'I, (name), do swear that I will, to the uttermost of my understanding, deal uprightly and justly in my office, without respect of favour or reward. So help me God': ibid Sch. 1, Part I.

8 As to the registrar, see PARA 1281 post.

9 Ecclesiastical Jurisdiction Measure 1963, s 2 (5) (a); Church of England (Worship and Doctrine) Measure 1974, s 2; Revised Canons Ecclesiastical, Canon G2 para 3 (amended by Amending Canon No. 4). The declaration is: 'I, (name), declare my belief in the faith which is revealed in the holy scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness': Canon G2 para 3 (amended by Amending Canon No. 4).

10 Ecclesiastical Jurisdiction Measure 1963, s 2 (5); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2.

UPDATE

1276 Qualification of chancellor

TEXT--The number of chancellorships of dioceses which any one person may hold is limited to two: Diocesan Chancellorship Regulations 1993, SI 1993/1841, reg 3 (made under the Ecclesiastical Jurisdiction Measure 1963 s 2A; Ecclesiastical Judges and Legal Officers Measure 1976 s 2). Any person who on 1 October 1993 holds more than the prescribed maximum number of chancellorships may continue to do so: 1993 Regulations reg 4. 1963 Measure s 2A amended: Church of England (Miscellaneous Provisions) Measure 2006 s 7(3).

TEXT AND NOTE 2--Person appointed must now have a seven-year general qualification (ie a right of audience in relation to all proceedings in the Senior Courts, or all proceedings in county or magistrates' courts) and may be either a barrister or a solicitor: 1963 Measure s 2(2); Courts and Legal Services Act 1990 s 71(2), (3)(c), Sch 10 para 17; Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 2; Constitutional Reform Act 2005 Sch 11 para 4.

In 1963 Measure s 2(2) for the words 'who has held high judicial office' now read 'holds or has held high judicial office or the office of circuit judge': Church of England (Miscellaneous Provisions) Measure 2006 s 7(2).

NOTE 2--Definition of 'high judicial office' in 1963 Measure s 66(1) substituted: Constitutional Reform Act 2005 Sch 17 para 16(3) (in force on 1 October 2009: SI 2009/1604).

1876 Act s 25 partly repealed: Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016. 1876 Act repealed: Constitutional Reform Act 2005 Sch 17 para 9, Sch 18 Pt 5 (in force on 1 October 2009: SI 2009/1604).

NOTE 4--1963 Measure s 68 repealed: Clergy Discipline Measure 2003 Sch 2.

TEXT AND NOTES 6-9--The words 'and subscribe' are omitted: 1963 Measure s 2(5); Church of England (Miscellaneous Provisions) Measure 1995 s 9(a).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1277. Chancellor's tenure of office.

1277. Chancellor's tenure of office.

The appointment of a chancellor under the Ecclesiastical Jurisdiction Measure 1963¹ is without limit of time², save that it will cease to have effect upon the termination of a vacancy in the see unless it has been previously confirmed by the capitular body³ of the cathedral church of the diocese⁴. A chancellor may resign his office by instrument in writing under his hand addressed to and served on the bishop of the diocese⁵, and he may be removed by that bishop if the Upper House of the convocation of the relevant province resolves that he is incapable of acting or unfit to act⁶.

1 Any judge or registrar of an ecclesiastical court appointed to office before the commencement of the Ecclesiastical Jurisdiction Measure 1963 on 1st March 1965 continues in his office as if he had been appointed under the Measure, nothing in which affects the terms and conditions of his appointment: s 83 (1). An appointment made before the commencement of the Measure, if confirmed by the capitular body of the cathedral (ie the dean and chapter or, as the case may be, the cathedral chapter: see PARA 636 ante) usually gave the chancellor a freehold for life, subject to due qualification: Gib Cod xxv; Godolphin's Repertorium Canonium 83; *Dr Sutton's Case* (1627) Litt 22; *Jones v Bishop of Llandaff* (1693) 4 Mod Rep 27.

2 Ecclesiastical Jurisdiction Measure 1963, s 2 (4).

3 Ie the dean and chapter or, as the case may be, the cathedral chapter: see PARA 636 ante.

4 Ecclesiastical Jurisdiction Measure 1963, s 2 (3). However, a person whose appointment so lapses may continue to act as chancellor for the purpose of completing business already commenced in the consistory court: s 2 (3) proviso. The existence (as distinct from the termination) of a vacancy in the see does not render the consistory court unable to exercise its jurisdiction, nor does it affect the discharge by the judges or officers of the court of their functions: s 12.

5 Ibid s 2 (4) (a).

6 Ibid s 2 (4) (b).

UPDATE

1277 Chancellor's tenure of office

TEXT AND NOTE 2--The appointment ends when the chancellor attains the age at which a circuit judge is obliged to vacate that office: Ecclesiastical Jurisdiction Measure 1963 s 2(4); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4. As to retirement of circuit judges see COURTS vol 10 (Reissue) PARA 523. Where the bishop considers it desirable in the interests of the diocese to retain the chancellor in office after the time at which he would otherwise retire, he may authorise the chancellor's continuance in office until such date, not being later than the date on which the chancellor attains the age at which a puisne judge of the High Court is obliged to vacate that office, as he thinks fit: 1963 Measure s 2(4A); 1991 Measure Sch 4.

TEXT AND NOTE 4--1963 Measure s 2(3) repealed: Church of England (Miscellaneous Provisions) Measure 1992 s 17(2), Sch 4. The appointment of a person to be chancellor of a diocese does not cease to have effect by reason only that a vacancy in the see is terminated and the appointment has not been previously confirmed by the dean and chapter of the cathedral church of the diocese: Church of England (Miscellaneous

Provisions) Measure 1992 s 12. 'Chancellor' includes the commissary general of the diocese of Canterbury: s 12.

NOTE 4--1963 Measure s 12 amended by the Clergy Discipline Measure 2003 Sch 1 para 5, so as to apply additionally to the Vicar-General's Court and disciplinary tribunals, and to members and officers thereof.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1278. Bishop's reservation of right to sit.

1278. Bishop's reservation of right to sit.

In some dioceses it has been the custom for the bishop, in the letters patent appointing the chancellor, to reserve to himself the right to exercise his ordinary jurisdiction, either by himself or in conjunction with his chancellor, in as ample a manner as if the grant had not been made to the chancellor¹. Such reservations have legal effect only insofar as they are not in conflict with the statute law. The position is now governed by the Ecclesiastical Jurisdiction Measure 1963, with the result, it seems, that such a reservation can be legally effective only in faculty proceedings; these may be heard and disposed of by the bishop alone or with the chancellor if, and insofar as, provision in that behalf is made in the letters patent by which the chancellor is appointed². Subject to that exception, the consistory court is to be presided over by a single judge, who is the chancellor³. In certain cases he is required to sit with assessors⁴; otherwise he sits alone to hear and dispose of the case⁵.

1 *R v Tristram* [1902] 1 KB 816, CA. See also the Report of the Ecclesiastical Courts Commission 1883, pp. 688 et seq. (returns from dioceses giving texts of patents of official principals etc.), from which it appears that at that date an appreciable number of chancellorships were still held by clergymen, that in most cases the appointments had been confirmed by the capitular body of the cathedral, and that in sixteen dioceses the bishop had reserved his right to sit in the consistory court.

2 Ecclesiastical Jurisdiction Measure 1963, s 46 (1) proviso. As to the position during a vacancy in the see, cf. para 1276 note 4 ante. See also the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 16, and PARA 1330 post.

3 Ecclesiastical Jurisdiction Measure 1963, s 2 (1). A deputy or substitute judge may, however, be appointed in certain circumstances to sit in place of the chancellor: see PARAS 1279, 1280 post.

4 Assessors are required at the trial of a priest or deacon for an offence under the Ecclesiastical Jurisdiction Measure 1963 not involving matter of doctrine, ritual or ceremonial: see s 28 (e), and PARA 1367 post. In such cases, although the bishop is not entitled to sit in the consistory court, provision is made for an extra-judicial procedure whereby he may pronounce sentence by consent, thus disposing of the matter of the complaint without the necessity of a trial in the consistory court: see s 31, and PARA 1363 post.

5 Ibid s 46 (1).

UPDATE

1278 Bishop's reservation of right to sit

TEXT AND NOTE 4--1963 Measure ss 28, 31 repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct under the 2003 Measure see PARA 1350A et seq.

NOTE 5--1963 Measure s 46(1) amended: Clergy Discipline Measure 2003 Sch 2.

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1279. Deputy chancellor.

In the event of the illness or temporary incapacity of the chancellor the bishop of the diocese may appoint a fit and proper person to act as deputy chancellor during the illness or incapacity, to have all the chancellor's powers and perform all his duties¹. Such an appointment is subject to the same requirements as the appointment of the chancellor himself in respect of qualifications, oaths and the declaration of assent².

¹ Ecclesiastical Jurisdiction Measure 1963, s 4 (1).

² Ibid s 4 (2); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon G 2 para 3 (amended by Amending Canon No. 4). See PARA 1276 ante.

UPDATE

1279 Deputy chancellor

TEXT AND NOTE 1--1963 Measure s 4(1) amended so as to provide for the appointment of a deputy having all the powers and duties of the office of chancellor for the period where the chancellor is for any reason unable to act as such, or where the office of chancellor is vacant: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 4.

Any chancellor may, with the consent of the bishop of the diocese, appoint, in writing, a fit and proper person to act as deputy chancellor of the diocese and any person so appointed will have all the powers and perform all the duties of the office of chancellor: 1963 Measure s 4(1B) (added by Church of England (Miscellaneous Provisions) Measure 2006 s 7(5)). The appointment of a deputy chancellor appointed under the 1963 Measure s 4(1B) will continue so long as the chancellor who appointed the deputy chancellor continues in office and, thereafter, for the period of three months beginning with the date on which the chancellor ceases to hold office or until the deputy chancellor attains the age at which the chancellor would be required to vacate the office of chancellor under s 2(4), whichever is sooner, but a deputy chancellor (1) may resign the office of deputy chancellor by notice in writing addressed to the chancellor, (2) may be removed by the chancellor, after consultation with the bishop, if the chancellor considers that the deputy is incapable of acting or unfit to act, and (3) may continue to act as chancellor for the purpose of any proceedings or cause of faculty in the consistory court of the diocese during the course of which the deputy chancellor attains the said age or, as the case may be, the three months period referred to above expires, as if the date of the conclusion in the court of those proceedings or that cause, as the case may be, were the date on which that age is attained or, as the case may be, that period has expired: s 4(1C) (as so added).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1280. Substitute judge for criminal trial.

1280. Substitute judge for criminal trial.

If the chancellor is of opinion for any reason that, for the purposes of any proceedings against a priest or deacon for an offence under the Ecclesiastical Jurisdiction Measure 1963, it is expedient that he should not himself preside over the consistory court, he may so certify in writing to the bishop and may, with the bishop's written consent, appoint another person who, in the chancellor's opinion, possesses sufficient experience in criminal law and procedure and consents to the appointment, to preside over the court for the purpose of those proceedings, being a person who is himself qualified for appointment as chancellor and who satisfies the bishop that he is a communicant¹.

¹ Ecclesiastical Jurisdiction Measure 1963, s 27 (1). Requirements as to oaths and declaration of assent, as well as qualifications, are the same as for a chancellor: s 27 (2); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon G 2 para 3 (amended by Amending Canon No. 4). See PARA 1276 ante.

UPDATE

1280 Substitute judge for criminal trial

TEXT AND NOTES--Repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct under the 2003 Measure see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1281. Registrar of consistory court.

1281. Registrar of consistory court.

The functions of registrar of the consistory court and those of registrar of the diocese are exercisable by the same person, who is designated 'registrar of the diocese and its consistory court'¹. In most dioceses the office is held in conjunction with that of legal secretary to the bishop².

The registrar is appointed by the bishop of the diocese³ and, subject to confirmation of the appointment by the capitular body of the cathedral⁴, has a freehold for life⁵. The person appointed must be a solicitor learned in the ecclesiastical laws and the laws of the realm⁶, and the bishop must satisfy himself that he is a communicant⁷. Before entering on the execution of his office the registrar must take the same oaths and make the same declaration as a chancellor⁸.

The appointment of a deputy registrar is not specifically authorised by any provision of the Ecclesiastical Jurisdiction Measure 1963⁹, but the possibility of such an appointment is implied in rules made under the Measure¹⁰. In the absence of express provision some doubt exists as to the circumstances in which a deputy registrar may be appointed, the mode and conditions of his appointment and the extent of his functions¹¹.

1 See the Revised Canons Ecclesiastical, Canon G4 para 1. In practice he is normally referred to as the diocesan registrar. In addition to his functions in connection with consistory court proceedings he has duties and responsibilities relating to such matters as the issue of marriage licences (see PARA 1025 ante), the appointment of sequestrators (see PARA 892 et seq ante), the consecration of churches and burial grounds (see PARA 1071 ante) and the maintenance of episcopal and diocesan registers: see the Report on the Church's Legal Officers, GS 149 (1973) 4, 5. He is also the registrar of the diocesan synod (see PARA 503 ante), but is not qualified for election to a deanery synod or parochial church council in the diocese of which he is registrar (see the Church Representation Rules, r 9 (1) proviso, contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865), and PARAS 529, 566 ante).

2 See the Report on the Church's Legal Officers, GS 149 (1973) 5. The office of legal secretary is described as a comparatively modern office, always held by a solicitor, and not a freehold. The legal secretary's duties, the extent of which is not precisely laid down, include advising and assisting the bishop in legal matters which affect his episcopal jurisdiction and office, eg the formalities connected with ordination, the filling of vacant benefices, the suspension of presentation, institutions, inductions, licences to officiate etc. The office is held in plurality by the registrar in thirty-eight out of forty-three dioceses: Church of England Year Book 1975.

3 Revised Canons Ecclesiastical, Canon G 4 para 1. The bishop cannot make an appointment subject to conditions as to fees or work etc.; nor can he delegate the registrar's duties to anyone without actually appointing him to the office, although an acting registrar could be appointed temporarily: Opinions of the Legal Board (5th Edn 1973) III/41. As to the possibility of the appointment of a deputy registrar, see infra.

4 See PARA 1277 note 3 ante.

5 *Ballard v Gerard* (1702) 12 Mod Rep 608. See Opinions of the Legal Board (5th Edn 1973) III/41; and the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 13, where it is stated that in the seventeenth century registrars began to be appointed for life under letters patent from the bishop, confirmed by the dean and chapter. If the appointment is not confirmed by the capitular body it will presumably cease to have effect on the termination of a vacancy in the see. There is, it seems, no statutory provision, such as exists in the case of a chancellor (see PARA 1277 ante), for termination of a registrar's appointment.

6 It is not certain whether he could be deprived for lack of learning: see *Jones v Bishop of Llandaff* (1693) 4 Mod Rep 27, where the question related to a somewhat similar provision of the Canons Ecclesiastical (1603) 127 (revoked) affecting a chancellor: see PARA 1276 note 2 ante.

7 Revised Canons Ecclesiastical, Canon G4 para 2. For the meaning of 'communicant', see PARA 1276 note 5 ante. A registrar of an ecclesiastical court appointed to office before 1st March 1965 was to continue in office as if he had been appointed under the Ecclesiastical Jurisdiction Measure 1963, and nothing in that Measure affects the terms and conditions of his appointment: s 83 (1). The Measure itself, although it mentions the diocesan registrar (eg in s 2 (5) (a)), makes no provision for his appointment or qualifications; see however s 65 (1) (b), which provides for the making of rules regulating inter alia the appointment and duties of officers of the courts; and see the definitions of 'registrar' in the rules made thereunder (see PARA 1323 note 1 post (faculty proceedings), and PARA 1362 note 2 post (disciplinary proceedings)).

8 Revised Canons Ecclesiastical, Canon G4 para 3. See PARA 1276 ante.

9 The Ecclesiastical Jurisdiction Measure 1963, s 65 (1) (b), provides for the making of rules regulating the appointment and duties of officers of the courts, but rules hitherto made have contained no provision respecting the mode or conditions of appointment of deputy registrars. The power to appoint a deputy registrar which is conferred on the diocesan registrar by the Church Representation Rules, r 28 (2), appears to apply only to functions exercisable by him in the capacity of registrar of the diocesan synod: see PARA 503 ante.

10 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 2 (1), and the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 2 (1), where 'registrar' is defined as including any person appointed to act as deputy registrar.

11 It is uncertain, for example, whether the appointment should be dealt with on the analogy of the provisions relating to deputy chancellors (see PARA 1279 ante), what limitations (if any) are applicable to the exercise of the registrar's functions by a deputy registrar, and in what respects a deputy registrar is to be distinguished from an acting registrar (see note 3 supra).

UPDATE

1281 Registrar of consistory court

TEXT--There is a registrar of the diocese for every diocese. He is legal adviser to the bishop: Ecclesiastical Judges and Legal Officers Measure 1976 s 4(1). He performs the functions conferred on the registrar of the diocese or the registrar of the consistory court and the functions previously performed by the bishop's legal secretary: s 4(2). He is appointed by the bishop after consultation with the bishop's council and standing committee of the diocesan synod: s 4(3). The registrar has power to appoint, with the consent of the bishop, a deputy registrar: see 1976 Measure s 4(5A)-(5D); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 5 para 3.

Regulations may limit the number of registrarships held by any one person: 1976 Measure s 5(1). The office is vacated when the registrar attains the age of seventy or such earlier age as may be prescribed by regulations: s 5(3). He may resign his office and his appointment may be terminated by the bishop with the consent of the archbishop: s 5(5)-(7) (s 5(5) amended by the Clergy Discipline Measure 2003 s 44(3)).

NOTE 1--The registrar must register any order made by the bishop under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 in the diocesan registry: *ibid* s 28. A fee authorised by an order made under the Ecclesiastical Fees Measure 1986 Pt II is payable to the registrar for registering any order under the 1991 Measure and for permitting searches for and inspection and furnishing copies of any such order: s 29.

TEXT AND NOTE 5--The appointment of a person to be registrar of a diocese does not cease to have effect by reason only that a vacancy in the see is terminated and the appointment has not been previously confirmed by the cathedral chapter of the cathedral church of the diocese: Church of England (Miscellaneous Provisions) Measure 1992 s 12.

NOTES 7, 9--Rule 28(2) renumbered as r 28(3): SI 1980/178. 1963 Measure s 65 repealed: 1991 Measure Sch 8 (see PARA 1296A).

NOTE 10--1967 Rules revoked: see now Faculty Jurisdiction Rules 2000, SI 2000/2047, reg 2(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1282. Examiners.

1282. Examiners.

For the purpose of making examiners available to hold preliminary inquiries into complaints respecting offences under the Ecclesiastical Jurisdiction Measure 1963 which are triable by the consistory court¹, provision is made for the establishment of a panel of not less than three persons, being communicants², who are either barristers or solicitors and who possess such experience as the chancellor considers appropriate³. The responsibility for establishing the panel is laid on the diocesan synod⁴.

1 See PARA 1363 post.

2 For the meaning of 'communicant', see PARA 1276 note 5 ante.

3 Ecclesiastical Jurisdiction Measure 1963, ss 23 (1) (b), 24, 30 (1), Sch. 2 para 1 (1).

4 The diocesan synod for each diocese (see PARA 503 et seq ante) must appoint a committee to draw up, with the synod's approval, and from time to time to revise, with the synod's approval, a panel of examiners: *ibid* Sch. 2 para 1 (1); Synodical Government Measure 1969, s 4 (7). Each examiner's term of office is determined by the synod before his appointment: Ecclesiastical Jurisdiction Measure 1963, Sch. 2 para 1 (2); Synodical Government Measure 1969, s 4 (7). If the examiner's term of office expires during the course of an inquiry he continues to act until he has completed his duties under the Ecclesiastical Jurisdiction Measure 1963, s 24: Sch. 2 para 3. If a panel member ceases to be qualified or resigns, dies or becomes incapable of acting, the diocesan bishop must declare a vacancy and may direct the committee to appoint a qualified replacement for the remainder of the term of office of the member he replaces: Sch. 2 para 4.

UPDATE

1282 Examiners

TEXT AND NOTES--Repealed: Clergy Discipline Measure 2003 Sch 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1283. Assessors.

1283. Assessors.

For the purpose of providing assessors to sit with the chancellor in the consistory court upon the trial of a priest or deacon for an offence under the Ecclesiastical Jurisdiction Measure 1963¹ the diocesan synod must arrange for the establishment of a panel of six priests and a panel of six laymen². The four assessors required at a trial are to be selected from the two panels in equal proportions³.

1 See PARA 1367 post.

2 Ecclesiastical Jurisdiction Measure 1963, ss 28 (e), 30 (2), Sch. 2 para 5 (1); Synodical Government Measure 1969, s 4 (7). For this purpose the synod appoints a committee to appoint and from time to time revise, with the synod's approval, the two panels: Ecclesiastical Jurisdiction Measure 1963, Sch. 2 para 5 (1). Before appointing a layman the body appointing him must satisfy itself that he is a communicant (defined in PARA 1276 note 5 ante): Sch. 2 para 5 (2). A panel member's term of office is such period not exceeding six years as is determined before his appointment: Sch. 2 para 5 (3). An assessor whose term of office expires during a trial at which he is acting continues to act until the conclusion of the trial: Sch. 2 para 9. If a panel member resigns, dies or becomes incapable of acting the diocesan bishop must declare a vacancy and direct the committee to appoint another priest or layman for the remainder of the term of office of the member he replaces: Sch. 2 para 10.

3 See *ibid* Sch. 2 para 6, and PARA 1367 post.

UPDATE

1283 Assessors

TEXT AND NOTES--Repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct under the 2003 Measure see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(ii) Consistory Courts/1284. Jurisdiction of consistory courts.

1284. Jurisdiction of consistory courts.

The consistory court of a diocese has original jurisdiction to hear and determine:

- 21 (1) proceedings in which a priest or deacon is charged upon articles with an offence under the Ecclesiastical Jurisdiction Measure 1963, not being an offence involving matter of doctrine, ritual or ceremonial, where the priest or deacon, when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in the diocese or resided there¹;
- 22 (2) a cause of faculty² for authorising any act relating to land within the diocese, or to anything on or in such land, being an act for the doing of which a faculty is needed³, or the sale of books comprised in a library within the diocese, being a library to which the Parochial Libraries Act 1708 applied⁴;
- 23 (3) proceedings upon any jus patronatus awarded by the diocesan bishop⁵;
- 24 (4) certain proceedings under the Pluralities Act 1838⁶; and
- 25 (5) any other proceedings which immediately before 31st July 1963⁷ it had power to hear and determine, not being proceedings jurisdiction to hear and determine which was expressly abolished by the Ecclesiastical Jurisdiction Measure 1963⁸.

1 See the Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (a), and PARA 1350 et seq post. No proceedings by way of a criminal suit, other than those authorised by Parts IV-VI (ss. 22-45) are to be instituted against any person in a consistory court or in the Court of Ecclesiastical Causes Reserved (see PARAS 1289, 1290 post), and no proceedings so authorised are to be instituted except in accordance with those Parts: s 69.

2 This provision does not extend the court's jurisdiction in faculty matters to any land or anything on or in such land in respect of which the court had no jurisdiction immediately before 31st July 1963: *ibid* s 6 (2). Nothing in s 66 (definitions) prejudices or affects the provisions of s 6 (2): s 66 (4).

3 *Ibid* s 6 (1) (b) (i): see PARA 1306 et seq post.

4 *Ibid* s 6 (1) (b) (ii): see PARA 1318 post.

5 *Ibid* s 6 (1) (c): see PARA 824 ante, 1347 post.

6 *Ibid* s 6 (1) (d); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2. For the proceedings concerned, see PARAS 1343, 1348 post.

7 *Ie* the date of the passing of the Ecclesiastical Jurisdiction Measure 1963.

8 *Ibid* s 6 (1) (e): see PARA 1344 post. Because criminal jurisdiction over the laity is not expressly abolished it is only by reason of ss 17, 69, that there is no machinery to implement it.

UPDATE

1284 Jurisdiction of consistory courts

TEXT AND NOTES--The consistory court also has jurisdiction to hear and determine proceedings for an injunction or restoration order under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13: 1963 Measure s 6(1)(bb); 1991 Measure Sch 4 para 5.

The consistory court has jurisdiction only in non-disciplinary matters: 1963 Measure ss 1(1), 6(1)(a) (amended and repealed respectively by the Clergy Discipline Measure 2003 Sch 1 para 2, Sch 2). As to disciplinary proceedings see PARA 1350A et seq.

An ecclesiastical court has jurisdiction to determine ownership of chattels, when deciding whether a faculty should be granted: *Re St Mary of Charity, Faversham* [1986] Fam 143, [1986] 1 All ER 1.

TEXT AND NOTE 1--1963 Measure s 6(1)(a) repealed by the Clergy Discipline Measure 2003 Sch 2. From that time the consistory court does not have jurisdiction to hear disciplinary proceedings for misconduct, which fall to be heard by disciplinary tribunals or the Vicar-General's Court under the 2003 Measure: see PARA 1350A et seq.

1963 Measure s 69 amended by the Clergy Discipline Measure 2003 Sch 1 para 12, Sch 2, inter alia to remove the references to Pts IV and V of the 1963 Measure.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(iii) Arches and Chancery Courts/1285. Constitution of the courts.

(iii) Arches and Chancery Courts

1285. Constitution of the courts.

For each of the two provinces of Canterbury and York there is a court of the archbishop, having appellate jurisdiction¹ and called the Arches Court of Canterbury² and the Chancery Court of York respectively³.

The judges of each of these courts are five in number⁴. One of them, the Dean of the Arches and Auditor, is a judge of both courts⁵. Of the other judges of each court two are persons in holy orders appointed by the prolocutor of the Lower House of the convocation of the relevant province⁶, and two are laymen, possessing such judicial experience as the Lord Chancellor thinks appropriate, appointed by the chairman of the House of Laity of the General Synod after consultation with the Lord Chancellor⁷.

The appointment of any person to be a judge of either court is without limit of time⁸, but provision is made for resignation and for removal from office in cases where a judge is incapable of acting or unfit to act⁹.

Proceedings in the Arches or Chancery Court by way of appeal from a judgment of a consistory court in which a priest or deacon is charged with an offence under the Ecclesiastical Jurisdiction Measure 1963, not being an offence involving matter of doctrine, ritual or ceremonial¹⁰, must be heard and disposed of by all the judges of the court, and any other proceedings must be heard and disposed of by the Dean of the Arches and Auditor¹¹.

Each of the two courts has its registrar, who is appointed by the archbishop of the province concerned and is designated registrar of the province and of the provincial court¹².

1 All original jurisdiction formerly exercisable by these courts was abolished by the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (b). This original jurisdiction included cases referred on letters of request from consistory courts on the ground of their importance (see the Ecclesiastical Jurisdiction Act 1531, s 1 (repealed)), disciplinary cases referred on letters of request (see the Church Discipline Act 1840, s 13 (repealed)), and cases concerning ornaments where the parties were not willing to accept the bishop's directions (see the Public Worship Regulation Act 1874, s 9 (repealed)). As to the courts' appellate jurisdiction, see PARA 1287 post.

2 The court is so called because it was formerly held in Bow Church (Ecclesia Beatae Mariae de Arcubus) in the City of London, which derived its name from the fact that its steeple was raised on stone pillars archwise: see Gib Cod 1004; 1 Burn's Ecclesiastical Law (4th Edn) 97.

3 Ecclesiastical Jurisdiction Measure 1963, s 1 (2) (a); Revised Canons Ecclesiastical, Canon G1 para 2 a. These courts are unaffected by any vacation of sees: Ecclesiastical Jurisdiction Measure 1963, s 12.

4 Ibid s 3 (1); Revised Canons Ecclesiastical, Canon G3 para 1.

5 Ecclesiastical Jurisdiction Measure 1963, s 3 (2) (a). As to the Dean of the Arches and Auditor, see PARA 1286 post.

6 Ibid s 3 (2) (b); Revised Canons Ecclesiastical, Canon G3 para 2 b. A person so appointed must take and subscribe the same oaths as the Dean of the Arches and Auditor (Ecclesiastical Jurisdiction Measure 1963, s 3 (7) (a), Sch. 1, Part I; Revised Canons Ecclesiastical, Canon G 3 para 6), and his compliance with this requirement must be similarly recorded (Ecclesiastical Jurisdiction Measure 1963, s 3 (8); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2: see PARA 1286 post.

7 Ecclesiastical Jurisdiction Measure 1963, s 3 (2) (c); Revised Canons Ecclesiastical, Canon G3 para 2 c. The chairman must satisfy himself that the person to be appointed is a communicant (as defined in PARA 1276 note 5 ante); Ecclesiastical Jurisdiction Measure 1963, s 3 (4); Revised Canons Ecclesiastical, Canon G3 para 4. A person so appointed is subject to the same requirements in respect of oaths and the declaration of assent as apply to the Dean of the Arches and Auditor if he is a layman: s 3 (7), (8), Sch. 1, Part I; Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon G3 paras 5 (amended by Amending Canon No. 4), 6: see PARA 1286 post.

8 Ecclesiastical Jurisdiction Measure 1963, s 3 (5).

9 Ibid s 3 (5) (b). Any judge other than the Dean may resign his office by instrument in writing under his hand, addressed to and served on the archbishop of the relevant province (s. 3 (5) (b) (i)), and may be removed by that archbishop if the Upper House of the convocation of the relevant province resolves that he is incapable of acting or unfit to act (s. 3 (5) (b) (ii)).

10 Ie in proceedings within ibid s 6 (1) (a): see PARA 1284 ante.

11 Ibid s 47 (1). Proceedings in the Arches and Chancery Courts are instituted and conducted in accordance with rules: see s 47 (2), and PARA 1335 et seq post (faculty proceedings), and PARA 1370 post (disciplinary proceedings). As to the attitude to be adopted by the court when hearing a faculty appeal, see PARA 1338 note 9 post.

12 See the Revised Canons Ecclesiastical, Canon G 4 para 1. Provisions as to qualifications and the oaths and declaration required on taking office are the same as for diocesan registrars: see Canon G4 paras 2, 3, and PARA 1281 ante. Numerous references to provincial registrars are to be found in the Ecclesiastical Jurisdiction Measure 1963 (eg in ss 3 (6)-(8), 18 (1), 64 (1), 78), and in the rules made thereunder. For the meaning of 'registrar' in the rules, see PARA 1323 note 1 post, and PARA 1362 note 2 post. The two principal registrars are joint registrars of the General Synod: see PARA 390 ante.

UPDATE

1285 Constitution of the courts

NOTE 1--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

NOTE 3--1963 Measure s 12 amended by the Clergy Discipline Measure 2003 Sch 1 para 5, so as to apply additionally to the Vicar-General's Court and disciplinary tribunals.

TEXT AND NOTES 4-7--Courts now as constituted under 1963 Measure s 3(2)(a)-(c) with the addition, under s 3(2)(d) (added by 1991 Measure Sch 4), of all the diocesan chancellors except the chancellor of the diocese in Europe. Only a person appointed under s 3(2)(b), (c) is now subject to the requirements as to oaths applying to the Dean of the Arches and Auditor: 1963 Measure s 3(7); 1991 Measure Sch 4.

TEXT AND NOTE 6--For 'prolocutor of the lower House of the Convocation' read 'president of tribunals from among the persons serving on the provincial panel': 1963 Measure s 3(2)(b) amended: Clergy Discipline Measure 2003 Sch 1 para 3(a). As to the president of tribunals see PARA 1350C.

TEXT AND NOTE 7--1963 Measure s 3(7), (8) amended; Church of England (Miscellaneous Provisions) Measure 1995 s 9(b) (see PARA 1286). Lay members are appointed by the president of tribunals from among the persons serving on the provincial panel of the relevant province: 1963 Measure s 3(2)(c), (4) amended by Clergy Discipline Measure 2003 Sch 1 para 3(b).

The Lord Chancellor's function under the 1963 Measure s 3 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 8--The appointment ends when the judge attains the age of 75 except, in certain circumstances, where the judge is a diocesan chancellor (see PARA 1277): Ecclesiastical Jurisdiction Measure 1963 s 3(5); Ecclesiastical Judges and Legal Officers

Measure 1976 s 1(2); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4.

NOTE 9--Removal is by the determination of the president of tribunals: 1963 Measure s 3(5)(b)(ii) amended by Clergy Discipline Measure 2003 Sch 1 para 3(d).

TEXT AND NOTE 11--1963 Measure s 47(1) substituted: 1991 Measure Sch 4 para 8. Proceedings in the Arches or Chancery Court must be heard and disposed of (a) in the case of an appeal from a judgment of the consistory court given in proceedings set out in 1963 Measure s 6(1)(a) (see PARA 1284) by all the judges of the courts except the diocesan chancellors; (b) in any other case, by the Dean of Arches and Auditor and two diocesan chancellors designated by him: 1963 Measure s 47 as substituted.

The 1963 Measure s 47 applies only to proceedings under that Measure: s 47(1), (2) amended by the Clergy Discipline Measure 2003 Sch 1 para 6(a), (b).

TEXT AND NOTE 12--The registrar of each of the provinces is also legal adviser to the archbishop: Ecclesiastical Judges and Legal Officers Measure 1976 s 3(1). He performs the functions conferred on the registrar of the province or registrar of the provincial court and the functions previously performed by the archbishop's legal secretary: s 3(2). He is appointed by the archbishop: s 3(3); Church of England (Miscellaneous Provisions) Measure 1983 s 6(1). In certain circumstances the archbishop must first consult the standing committee of the General Synod: 1976 Measure s 3(5); 1983 Measure s 6(2). The office of registrar of a province may be held by two persons jointly: 1976 Measure s 3(4). For the appointment of deputy registrars see *ibid* s 3(4A)-(4C); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 5 para 2. For tenure of office and other provisions see 1976 Measure s 5; PARA 1281.

1963 Measure s 64 repealed: 1991 Measure Sch 8.

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1286. The Dean of the Arches and Auditor.

The Dean of the Arches and Auditor is a judge both of the Arches Court of Canterbury and of the Chancery Court of York¹; in respect of his jurisdiction in the Province of Canterbury he is styled Dean of the Arches² and in respect of his jurisdiction in the Province of York he is styled Auditor³. He is appointed by the Archbishops of Canterbury and York jointly, with the Queen's approval signified by warrant under the sign manual⁴. He must be either a barrister of at least ten years' standing or a person who has held high judicial office, and before appointing a layman the archbishops must satisfy themselves that he is a communicant⁵. Before entering on the execution of his office he must take and subscribe the oath of allegiance and the appropriate judicial oath either before each of the archbishops in the presence of the provincial registrar or in open court in each province in the presence of the provincial registrar⁶. If the person appointed is a layman he must also make and subscribe in the same circumstances the appropriate declaration of assent⁷.

The appointment is without limit of time⁸, but the person appointed may resign his office by instrument in writing under his hand, addressed to and served on both archbishops⁹, and he may be removed by them jointly if the Upper House of each convocation resolves that he is incapable of acting or is unfit to act¹⁰.

In the event of the illness or temporary incapacity of the Dean of the Arches and Auditor the Archbishops of Canterbury and York may appoint a fit and proper person to act as Deputy Dean of the Arches and Auditor during the illness or incapacity, and a person so appointed has the same powers and duties as the Dean¹¹.

1 Ecclesiastical Jurisdiction Measure 1963, s 3 (2) (a); Revised Canons Ecclesiastical, Canon G3 para 2 a.

2 He was formerly called *Officialis de Arcubus* (Gib Cod 1004; cf. para 1285 note 2 ante), and is described in his letters patent as 'Official Principal of the Arches Court of Canterbury'. See also Phillimore, *Ecclesiastical Law* (2nd Edn) 924.

3 Ecclesiastical Jurisdiction Measure 1963, s 3 (2) (a). He is referred to generally in the Measure as the Dean of the Arches and Auditor: s 3 (2) (a). He is ex officio the official principal of each of the archbishops in their respective capacities of metropolitans (see PARA 430 note 1 ante) and is Master of the Faculties (see PARA 1266 ante): s 13 (1). At the present time he is also vicar-general of the Province of Canterbury (but not of York, where the diocesan chancellor is provincial vicar-general). As to provincial vicars-general, see PARA 430 note 3 ante.

4 Ibid s 3 (2) (a); Revised Canons Ecclesiastical, Canon G3 para 2 a.

5 Ecclesiastical Jurisdiction Measure 1963, s 3 (3); Revised Canons Ecclesiastical, Canon G3 para 3. For the meaning of 'high judicial office' and 'communicant', see PARA 1276 notes 2, 5 ante.

6 Ibid s 3 (6) (a), Sch. 1, Part I; Church of England (Worship and Doctrine) Measure 1974, s 6 (2), Sch. 2; Revised Canons Ecclesiastical, Canon G 3 para 5 (amended by Amending Canon No. 4). The oaths, set out in the Ecclesiastical Jurisdiction Measure 1963, Sch. 1, Part I, are the same as those to be taken by a chancellor: see PARA 1276 notes 6, 7 ante. Compliance with the requirements must be recorded by the provincial registrar (as to whom see PARA 1285 text and note 12 ante): s 3 (8); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2.

7 Revised Canons Ecclesiastical, Canon G3 para 5 (amended by Amending Canon No. 4). The declaration, set out in Canon G2 para 3 (amended by Amending Canon No. 4), is the same as that taken by a chancellor: see PARA 1276 note 9 ante.

8 Ecclesiastical Jurisdiction Measure 1963, s 3 (5).

9 Ibid s 3 (5) (a) (i).

10 Ibid s 3 (5) (a) (ii).

11 Ibid s 4 (1). Such an appointment is subject to the same requirements as the appointment of the Dean himself in respect of qualifications, oaths and the declaration of assent: s 4 (2); Church of England (Worship and Doctrine) Measure 1974, s 6 (3), Sch. 2; Revised Canons Ecclesiastical, Canon G3 para 5 (amended by Amending Canon No. 4).

UPDATE

1286 The Dean of the Arches and Auditor

TEXT AND NOTE 5--1963 Measure s 3(3) amended by Courts and Legal Services Act 1990 s 71(2), (3)(b), Sch 10 para 18(1) so as to substitute 'person who has a ten-year High Court qualification' (ie a right of audience in relation to all proceedings in the High Court) for 'a barrister of at least ten years' standing', and by Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 3 so as to include a person who holds high judicial office as well as a person who has held such office.

TEXT AND NOTE 6--Every chancellor of a diocese must also take the prescribed oaths; the words 'and subscribe' are omitted: 1963 Measure s 3(6); 1991 Measure Sch 4 para 3; Church of England (Miscellaneous Provisions) Measure 1995 s 9(b).

TEXT AND NOTE 11--1963 Measure s 4(1) amended so as to provide for the appointment of a deputy having all the powers and duties of the office of Dean of the Arches and Auditor for the period where the Dean is for any reason unable to act as such, or where the office of Dean is vacant: 1991 Measure Sch 4 para 4.

The Dean of the Arches and Auditor may, with the consent of the Archbishops of Canterbury and York appoint a fit and proper person to act as deputy Dean of the Arches and Auditor for such period not exceeding 12 months or for such purpose as may be specified in the instrument of appointment, and during that period or for that purpose every person so appointed will have all the powers and perform all the duties of the office of Dean of the Arches and Auditor: 1963 Measure s 4(1A); 1991 Measure Sch 4 para 4; Church of England (Miscellaneous Provisions) Measure 2006 s 7(4).

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1287. Jurisdiction of Arches and Chancery Courts.

The Arches Court of Canterbury and the Chancery Court of York have appellate jurisdiction only¹. They have jurisdiction to hear and determine appeals from judgments, orders or decrees of consistory courts of dioceses within their respective provinces in any proceedings other than causes of faculty involving matter of doctrine, ritual or ceremonial² and proceedings concerning jus patronatus³.

1 The original jurisdiction formerly enjoyed by the courts in certain classes of cases was abolished by the Ecclesiastical Jurisdiction Measure 1963, s 82 (2) (b): see PARA 1285 note 1 ante. Appeals must be lodged and conducted in such manner as may be prescribed: ss 7 (3), 47 (2). For the procedure on faculty appeals, see PARA 1335 et seq post; for the procedure on disciplinary appeals, see PARA 1370 post.

2 In causes of faculty involving matter of doctrine etc. appeal lies to the Court of Ecclesiastical Causes Reserved: see ibid s 10 (1), and PARA 1290 post. As to the chancellor's duty to certify, upon application, whether or not a question of doctrine, ritual or ceremonial is involved, see s 10 (3), and PARA 1335 post.

3 Ibid s 7 (1). They thus have jurisdiction to hear appeals in proceedings under s 6 (1) (a), (b) (other than faculty proceedings involving matter of doctrine etc.), (d), (e). As to the jurisdiction of consistory courts, see PARA 1284 ante. In proceedings concerning jus patronatus the consistory court's decision would appear to be final: see PARA 1347 post. As to jus patronatus, see also PARA 824 ante.

UPDATE

1287 Jurisdiction of Arches and Chancery Courts

TEXT--Each of these courts also has jurisdiction to hear and determine appeals from judgments, orders or decrees of the Vicar-General's court of the province of Canterbury or York, (including that court as constituted in accordance with the Clergy Discipline Measure 2003), as the case may be: 1963 Measure s 7(1A) (added by the Care of Cathedrals (Supplementary Provisions) Measure 1994, s 8, Schedule, para 2(a); amended by the 2003 Measure Sch 1 para 4(a)). Each of these courts also has jurisdiction to hear and determine appeals from judgments, orders or decrees of disciplinary tribunals within the provinces for which they are constituted respectively: 1963 Measure s 7(1B) (added by the 2003 Measure Sch 1 para 4(b)).

NOTE 1--The 1963 Measure s 47 applies only to proceedings under that Measure: s 47(2) amended by the Clergy Discipline Measure 2003 Sch 1 para 6(b).

TEXT AND NOTE 2--In any proceedings in the Arches and Chancery Courts on an appeal from a consistory court in a cause of faculty the court may, if it considers that the appeal relates to matter involving doctrine, etc refer the appeal (notwithstanding any chancellor's certificate to the contrary) to the Court of Ecclesiastical Causes Reserved: 1963 Measure s 10(5); 1991 Measure, Sch 4 para 7. As to chancellor's certificates see PARA 1335.

TEXT AND NOTE 3--The Arches and Chancery Courts also have jurisdiction to hear and determine appeals in proceedings for an injunction under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13(4) or for a restoration order under the 1991 Measure s 13(5), from interlocutory orders of consistory courts in causes of faculty involving matter of doctrine, ritual and ceremony, and from judgments, orders

or decrees of the Vicar-General's court (see PARA 633A.2): 1963 Measure s 7(1)(c); 1991 Measure Sch 4 para 6; Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 2.

1963 Measure s 6(1)(a) repealed, s 7(1)(a) amended: Clergy Discipline Measure 2003 Sch 2.

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(iv) Her Majesty in Council

1288. The Privy Council's jurisdiction in ecclesiastical causes.

The Judicial Committee of the Privy Council¹ has jurisdiction to hear and determine appeals from judgements of the Arches Court of Canterbury and the Chancery Court of York in causes of faculty not involving matter of doctrine, ritual or ceremonial².

In addition to its jurisdiction under the Ecclesiastical Jurisdiction Measure 1963, it has jurisdiction in respect of appeals against pastoral schemes prepared by pastoral committees³ and appeals against schemes prepared by the Cathedrals Commission⁴.

1 As to the Judicial Committee of the Privy Council, see COURTS vol 10 (Reissue) PARA 401 et seq.

2 Ecclesiastical Jurisdiction Measure 1963, ss 1 (3) (d), 8 (1); Revised Canons Ecclesiastical, Canon G1 para 5. This provision has had the effect of curtailing the jurisdiction previously exercised by the Privy Council in ecclesiastical causes: see PARAS 1264, 1265 ante. As to the jurisdiction exercised in respect of faculty matters by the Arches and Chancery Courts (on appeal from consistory courts), see PARA 1287 ante. As to the practice and procedure in appeals under the Ecclesiastical Jurisdiction Measure 1963, s 8, see PARA 1339 post.

3 See the Pastoral Measure 1968, s 8 (2), and PARA 881 ante.

4 See the Cathedrals Measure 1963, s 3 (8), (9), and PARA 615 ante.

UPDATE

1288 The Privy Council's jurisdiction in ecclesiastical causes

NOTE 3--Now Pastoral Measure 1983 s 9(1) (s 9 substituted by the Church of England (Miscellaneous Provisions) Measure 2005 Sch 4 para 4).

TEXT AND NOTE 4--For 'Cathedrals Commission' read now 'Cathedral Statutes Commission': Cathedrals Measure 1976 ss 1(1), 3(2) (both repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3).

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(v) Court of Ecclesiastical Causes Reserved

1289. Constitution of the court.

The Court of Ecclesiastical Causes Reserved, which has both original and appellate jurisdiction covering both provinces¹, was brought into being by the Ecclesiastical Jurisdiction Measure 1963². It is constituted of five judges appointed by the Queen, of whom two must be persons who hold or have held high judicial office³ and who make declarations that they are communicants⁴, and three must be persons who are or have been diocesan bishops⁵.

When trying a person charged with an offence the court must sit with not less than three nor more than five advisers selected by the Dean of the Arches and Auditor from a panel of eminent theologians and liturgiologists⁶.

1 As to the court's jurisdiction, see PARA 1290 post.

2 Ecclesiastical Jurisdiction Measure 1963, s 1 (3) (b); Revised Canons Ecclesiastical, Canon G1 para 3 a. Its creation had been recommended in the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 53: see PARA 1265 ante.

3 For the meaning of 'high judicial office', see PARA 1276 note 2 ante.

4 For the meaning of 'communicant', see PARA 1276 note 5 ante.

5 Ecclesiastical Jurisdiction Measure 1963, s 5.

6 Ibid s 45 (2). The panel must be drawn up, and from time to time revised, by the Upper Houses of the Convocations of Canterbury and York acting jointly, and with the approval of the Lower Houses of those convocations: s 45 (2). See further PARA 1367 post.

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1290. Jurisdiction of the court.

The Court of Ecclesiastical Causes Reserved has original jurisdiction to hear and determine proceedings in which a priest or deacon or an archbishop or bishop is charged upon articles with an offence against the laws ecclesiastical involving matter of doctrine, ritual or ceremonial¹, and all suits of duplex querela². Its appellate jurisdiction is exercisable in respect of appeals from judgments, orders or decrees of consistory courts in causes of faculty involving matter of doctrine, ritual or ceremonial³. The court is not bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial⁴.

¹ Ecclesiastical Jurisdiction Measure 1963, s 10 (1) (a). This is the limit of the court's criminal jurisdiction: see s 69, and PARA 1284 note 1 ante. This jurisdiction is exercisable in the case of a priest or deacon who, when the offence was alleged to have been committed or when the proceedings were instituted, held preferment in or resided in a diocese: s 10 (1) (a) (i). It is exercisable in the case of an archbishop or bishop who, at one of those times, was a diocesan or a suffragan commissioned by a diocesan or, not being a diocesan or suffragan, held preferment in or resided in a diocese: s 10 (1) (a) (ii). 'Preferment' includes an archbishopric, bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty: s 66 (1). For the meaning of 'benefice', see PARA 768 note 1 ante. For the practice and procedure in these cases, see PARA 1362 et seq post.

² Ibid s 10 (1) (b). A suit of duplex querela is a form of procedure available (more particularly in cases involving questions of doctrine or ritual) for challenging a bishop's refusal to admit a presentee to a benefice, as to which see PARAS 820, 823 ante. Jurisdiction in such suits was formerly exercisable by the Court of Arches or Chancery Court of York or, if the refusing Ordinary was an archbishop, by the Privy Council, but that jurisdiction has in effect been transferred to the Court of Ecclesiastical Causes Reserved: see s 82 (1), (2) (b), and s 10 (1) (b).

³ Ibid s 10 (1). As to the jurisdiction of consistory courts in relation to causes of faculty, see PARA 1284 ante, 1306 post; as to the practice and procedure, see PARA 1322 et seq post.

⁴ Ibid s 45 (3). For an indication of the reasons for including this provision in the Measure, see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 71-73, and see PARA 1271 ante.

UPDATE

1290 Jurisdiction of the court

1963 Measure s 69 amended by the Clergy Discipline Measure 2003 Sch 1 para 12, Sch 2.

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(vi) Commissions of Convocation

1291. Constitution and jurisdiction of commissions of convocation.

The Ecclesiastical Jurisdiction Measure 1963 makes provision for the appointment, when required, of commissions¹ to exercise original jurisdiction with respect to the trial of archbishops or bishops charged with offences against the laws ecclesiastical, other than offences involving matter of doctrine, ritual or ceremonial². In the case of an archbishop, the commission is to be appointed by the Upper Houses of the convocations of both provinces³; in the case of a bishop, by the Upper House of the convocation of the relevant province⁴.

In either case the commission consists of the Dean of the Arches and Auditor⁵, who presides⁶, and four diocesan bishop⁷. The commission's decision is subject to review by a commission of review⁸.

1 Ecclesiastical Jurisdiction Measure 1963, s 1 (2) (b), (3) (a).

2 Ibid s 9; Revised Canons Ecclesiastical, Canon G1 paras 2 b, 3 b. As to the procedure, see PARA 1362 et seq post.

3 Ecclesiastical Jurisdiction Measure 1963, s 9 (1); Revised Canons Ecclesiastical, Canon G1 para 3 b.

4 Ecclesiastical Jurisdiction Measure 1963, s 9 (2); Revised Canons Ecclesiastical, Canon G1 para 2 b. The jurisdiction is exercisable only if the bishop was, at the time when the offence was alleged to have been committed or when the proceedings were instituted, a diocesan bishop whose diocese was within the relevant province, a suffragan bishop commissioned by any such diocesan bishop or another bishop who resided or held preferment in such a diocese: Ecclesiastical Jurisdiction Measure 1963, s 9 (2). For the meaning of 'preferment', see PARA 1290 note 1 ante. The powers of Houses of convocation in this respect are not affected by the introduction of synodical government: see the Synodical Government Measure 1969, s 3 (6).

5 As to the Dean of the Arches and Auditor, see PARA 1286 ante.

6 Ecclesiastical Jurisdiction Measure 1963, s 36 (a).

7 Ibid s 35. As to the mode of appointing commissions, see s 35 (a), (b), and PARA 1363 note 20 post.

8 See PARA 1292 post.

UPDATE

1291 Constitution and jurisdiction of commissions of convocation

TEXT AND NOTES--Repealed: Clergy Discipline Measure 2003 Sch 2. As to proceedings for misconduct (disciplinary proceedings) see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(2) CONSTITUTION AND JURISDICTION OF ECCLESIASTICAL COURTS/(vii) Commissions of Review/1292. Constitution and jurisdiction of Commissions of Review.

(vii) Commissions of Review

1292. Constitution and jurisdiction of Commissions of Review.

The Ecclesiastical Jurisdiction Measure 1963 makes provision for the appointment of commissioners to review the findings of the Court of Ecclesiastical Causes Reserved and of any commission of convocation¹. It is open to any party to the proceedings to apply for a review on a question of law or of fact², save that in proceedings upon articles charging an offence against the laws ecclesiastical it is only the defendant who may apply for review on a question of fact³. Application is made by a petition addressed to the Queen⁴. Upon a petition being lodged, a commission is directed under the Great Seal to five persons nominated by the Queen to review the findings⁵. Of these persons, collectively described as a Commission of Review, three must be lords of appeal⁶, who make a declaration that they are communicants⁷, and two must be lords spiritual sitting as Lords of Parliament⁸. When a question of doctrine is involved a Commission of Review must sit with five advisers selected by it from a panel appointed for this purpose⁹.

The judgment of the commission is to be according to the opinion of the majority of its members, each of whom is required to state his own opinion¹⁰. The commission is not bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial¹¹; a decision of a previous Commission of Review is, however, binding on it, except in regard to a matter on which new information or evidence is adduced which was not before the commission on the previous occasion¹².

1 Ecclesiastical Jurisdiction Measure 1963, s 1 (3) (c); Revised Canons Ecclesiastical, Canon G1 para 4. As to the Court of Ecclesiastical Causes Reserved, see PARAS 1289, 1290 ante; as to commissions of convocation, see PARA 1291 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 11 (1), (2).

3 Ibid s 11 (1), (2) (a).

4 Ibid s 11 (1), (2). As to the procedure, see PARA 1340 post (faculty proceedings), and PARA 1371 post (disciplinary proceedings).

5 Ibid s 11 (4).

6 Ie within the meaning of the Appellate Jurisdiction Act 1876, s 5: see COURTS vol 10 (Reissue) PARA 365.

7 For the meaning of 'communicant', see PARA 1276 note 5 ante.

8 Ecclesiastical Jurisdiction Measure 1963, s 11 (4).

9 Ibid s 48 (3). The panel must be appointed by the Upper Houses of the convocations of both provinces jointly, and must consist of members of either of those Houses and also, if thought fit, of theologians who are not members of those Houses: s 48 (2). The function of the advisers is to give such assistance on matters of doctrine as the commission may require: s 48 (3). It may be noted that s 48 (2) does not refer, as does s 45 (2), to eminent liturgiologists: cf. para 1289 ante.

10 Ibid s 48 (4).

11 Ibid s 48 (5).

12 Ibid s 48 (6). See also PARA 1271 ante.

UPDATE

1292 Constitution and jurisdiction of Commissions of Review

TEXT AND NOTES 1-4--1963 Measure s 1(3)(c) amended, s 11(1) repealed, by the Clergy Discipline Measure 2003 Sch 2, so that these provisions no longer apply to commissions of convocation.

Disciplinary proceedings for misconduct are to be conducted under the 2003 Measure: see PARA 1350 et seq.

TEXT AND NOTE 5--1963 Measure s 11(4) amended: Constitutional Reform Act 2005 Sch 17 para 16(2) (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(i) In general/1293. Classification of proceedings.

(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS

(i) In general

1293. Classification of proceedings.

The summaries in the following paragraphs¹ show the broad outline of the course of proceedings² in respect of each category of cases heard in ecclesiastical courts, including proceedings in the appellate courts and on review. A distinction is made, in relation to faculty proceedings and disciplinary proceedings, between ordinary cases, where matters of doctrine, ritual and ceremonial are not involved, and reserved cases, where such matters are involved³.

¹ See PARAS 1294, 1295 post.

² As to the procedure for instituting and conducting proceedings, see PARA 1322 et seq post (faculty proceedings) PARA 1345 et seq post (other civil proceedings), and PARA 1362 et seq post (disciplinary proceedings).

³ As to the importance of this distinction, see PARA 1266 note 4 ante. For the purposes of an appeal against the decision of a consistory court in faculty proceedings the chancellor must certify, on application, whether or not a question of doctrine, ritual or ceremonial is involved, and his certificate is conclusive: see the Ecclesiastical Jurisdiction Measure 1963, s 10 (3), and PARA 1335 post. Subject to that provision this issue is one for determination by the court whose jurisdiction is being invoked.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(i) In general/1294. Summary of civil procedure.

1294. Summary of civil procedure.

The following is a summary of the procedure in the various types of civil proceedings heard and determined in ecclesiastical courts:

- 26 (1) Faculty cases¹:
 1. (a) Ordinary cases²:
 1. (i) hearing in the consistory court³;
 2. (ii) appeal to the Arches or Chancery Court⁴;
 3. (iii) further appeal to the Judicial Committee of the Privy Council⁵.
 2. (b) Reserved cases⁶:
 4. (i) hearing in the consistory court⁷;
 5. (ii) appeal to the Court of Ecclesiastical Causes Reserved⁸;
 6. (iii) review by a Commission of Review⁹.
- 27 (2) Suits of duplex querela¹⁰:
 3. (a) hearing in the Court of Ecclesiastical Causes Reserved¹¹;
 4. (b) review by a Commission of Review¹¹.
- 28 (3) Cases of jus patronatus¹²:
 5. (a) hearing in the consistory court¹³;
 6. (b) no provision for appeal or review.
- 29 (4) Other civil proceedings¹⁴:
 7. (a) hearing in the consistory court¹⁵;
 8. (b) appeal to the Arches or Chancery Court¹⁵.

1 See PARA 1306 et seq post.

2 As to the distinction between ordinary and reserved cases, see PARA 1293 ante.

3 See PARA 1322 et seq post. As to the consistory court, see PARA 1274 et seq ante.

4 See PARA 1335 et seq post. As to the Arches and Chancery Courts, see PARAS 1285-1287 ante.

5 See PARA 1339 post.

6 As to the distinction between ordinary and reserved cases, see PARA 1293 ante.

7 See PARA 1322 et seq post.

- 8 See PARA 1335 et seq post. As to the Court of Ecclesiastical Causes Reserved, see PARAS 1289, 1290 ante.
- 9 See PARA 1340 post. As to Commissions of Review, see PARA 1292 ante.
- 10 As to duplex querela, see PARAS 820, 823 ante. See also PARA 1290 note 2 ante.
- 11 See PARA 1346 post.
- 12 As to jus patronatus, see PARAS 820, 824 ante.
- 13 See PARA 1347 post.
- 14 See PARAS 1343, 1344 post.
- 15 See PARA 1345 et seq post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(i) In general/1295. Summary of disciplinary procedure.

1295. Summary of disciplinary procedure.

The following is a summary of the procedure following the laying of a complaint¹ in disciplinary proceedings² heard and determined in ecclesiastical courts:

- 30 (1) Ordinary cases³:
 9. (a) Proceedings against a priest or deacon:
 7. (i) consideration of the complaint by the bishop⁴;
 8. (ii) on the accused's application: censure by the bishop, terminating the proceedings⁴;
 9. (iii) inquiry by examiner⁴;
 10. (iv) trial in and, on conviction, pronouncement of censure by consistory court⁵;
 11. (v) appeal to the Arches or Chancery Court⁶.
 6. 10. (b) Proceedings against a bishop:
 7. 12. (i) inquiry by an episcopal committee⁷;
 13. (ii) trial by a commission of convocation⁸;
 14. (iii) submission of findings to the Upper House of the appropriate convocation⁹;
 15. (iv) on conviction, pronouncement of censure by the appropriate archbishop⁹;
 16. (v) review by a Commission of Review¹⁰.
 8. 11. (c) Proceedings against an archbishop:
 9. 17. (i) inquiry by an episcopal committee¹¹;
 18. (ii) trial by a joint commission of the convocations¹²;
 19. (iii) submission of findings to a joint meeting of the Upper Houses of the convocations¹²;
 20. (iv) on conviction, pronouncement of censure by the other archbishop¹²;
 21. (v) review by a Commission of Review¹³.
10. 10. (2) Reserved cases¹⁴:
 11. 12. (a) Proceedings against a priest or deacon:
 11. 22. (i) consideration of the complaint by the bishop¹⁵;
 23. (ii) inquiry by a committee of convocation¹⁵;
 24. (iii) trial and, on conviction, pronouncement of censure by the Court of Ecclesiastical Causes Reserved¹⁶;
 25. (iv) review by a Commission of Review¹⁷.
 12. 13. (b) Proceedings against a bishop:

13.
 26. (i) consideration of the complaint by the appropriate archbishop¹⁸;
 27. (ii) inquiry by a committee of convocation¹⁸;
 28. (iii) trial and, on conviction, pronouncement of censure by the Court of Ecclesiastical Causes Reserved¹⁹;
 29. (iv) review by a Commission of Review²⁰.
- 14.
14. (c) Proceedings against an archbishop:
15.
 30. (i) inquiry by a committee of convocation²¹;
 31. (ii) trial and, on conviction, pronouncement of censure by the Court of Ecclesiastical Causes Reserved²²;
 32. (iii) review by a Commission of Review²³.
- 16.
- 12

- 1 As to the laying of complaints, see PARA 1362 post.
- 2 As to disciplinary proceedings, see PARA 1350 et seq post.
- 3 As to the distinction between ordinary and reserved cases, see PARA 1293 ante.
- 4 See PARA 1363 post.
- 5 See PARA 1367 post. As to the consistory court, see PARA 1274 et seq ante; as to censures, see PARA 1372 et seq post.
- 6 See PARA 1370 post. As to the Arches and Chancery Courts, see PARAS 1285-1287 ante.
- 7 See PARA 1363 post.
- 8 See PARA 1367 post. As to commissions of convocation, see PARA 1291 ante.
- 9 See PARA 1367 post.
- 10 See PARA 1371 post. As to commissions of Review, see PARA 1292 ante.
- 11 See PARA 1363 post.
- 12 See PARA 1367 post.
- 13 See PARA 1371 post.
- 14 As to the distinction between ordinary and reserved cases, see PARA 1293 ante.
- 15 See PARA 1363 post.
- 16 See PARA 1367 post. As to the Court of Ecclesiastical Causes Reserved, see PARAS 1289, 1290 ante.
- 17 See PARA 1371 post.
- 18 See PARA 1363 post.
- 19 See PARA 1367 post.
- 20 See PARA 1371 post.
- 21 See PARA 1363 post.
- 22 See PARA 1367 post.
- 23 See PARA 1371 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(i) In general/1296. Procedure and practice in general.

1296. Procedure and practice in general.

The procedure and practice of the ecclesiastical courts today are governed to a large extent by rules made under the relevant modern enactments¹. Comprehensive provision is thus made in respect of faculty proceedings² and disciplinary proceedings³. In other proceedings the customary rules of the ecclesiastical courts are, with some modifications, still applicable⁴. The proceedings in ecclesiastical courts are not governed by the rules of common law or by any analogies which those rules furnish⁵, save where express provision is made to that effect⁶.

Any court or commission established under the Ecclesiastical Jurisdiction Measure 1963⁷ has the same powers as the High Court in relation to the attendance and examination of witnesses and the production and inspection of documents⁸.

1 Under the Ecclesiastical Jurisdiction Measure 1963 there is a rule committee consisting of (1) the Lord Chancellor; (2) the two archbishops, or members appointed by each of them from the Upper House of the convocation of the province; (3) two persons appointed by the Lord Chancellor of whom at least one holds or has held high judicial office (for the meaning of which see PARA 1276 note 2 ante); (4) the Dean of the Arches and Auditor; (5) the prolocutors of the Lower House of each convocation or a member from each Lower House appointed by its prolocutor; (6) the two provincial registrars; and (7) a chancellor and a diocesan registrar from each province, appointed by the archbishop of that province: see s 64 (1). The chairman is the Lord Chancellor (s. 64 (1)), but if he is absent his place is taken by a person who holds or has held high judicial office appointed a member of the committee by the Lord Chancellor (s. 64 (3)). Any five members of the committee, one of whom is the Lord Chancellor or a person appointed by him, may exercise the powers of the rule committee: s 64 (2).

The committee has power to make rules for carrying the Measure into effect and for all matters not otherwise provided for, incidental to or connected with the administration of justice under the Measure, and in particular for regulating, inter alia, the procedure and practice of all courts, commissions, committees and examiners including courts of appellate jurisdiction (so far as rules made by the Judicial Committee of the Privy Council do not extend): s 65 (1) (a); see also notes 2, 3 infra.

Under the Faculty Jurisdiction Measure 1964 a rule committee may make rules for regulating all matters of procedure and practice within the cognisance of the faculty jurisdiction of all courts, and otherwise for carrying the Measure into effect: s 14 (1); see also note 2 infra.

The rule committee consists of (a) a diocesan bishop nominated by the two archbishops; (b) the vicars-general of each province; (c) the chancellor of the diocese of London; (d) one diocesan registrar, not being a provincial registrar, nominated by the two archbishops; and (e) one clerical member and one lay member nominated by the Council for Place of Worship (as to which see PARA 1321 post): s 15, Schedule para 1. Any three members of the committee, two of them holding any office in classes (b)-(d) supra, may exercise all the powers of the committee: Schedule para 2.

Every rule made under the Ecclesiastical Jurisdiction Measure 1963, s 65, or the Faculty Jurisdiction Measure 1964, s 14, must be laid before the General Synod and does not come into operation until it has been so approved: Ecclesiastical Jurisdiction Measure 1963, s 65 (2); Faculty Jurisdiction Measure 1964, s 14 (3); Synodical Government Measure 1969, s 2 (2). When it is so approved the Statutory Instruments Act 1946 applies to it as if it were a statutory instrument, made when approved, and as if the Measure under which it was made provided that the rule should be subject to annulment in pursuance of a resolution of either House of Parliament: Ecclesiastical Jurisdiction Measure 1963, s 65 (3); Faculty Jurisdiction Measure 1964, s 14 (4).

2 See the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002 (amended by S.I. 1965 No. 135); Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251; and PARA 1322 et seq post.

3 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755; and see PARA 1362 et seq post. See also the Ecclesiastical Jurisdiction (Legal Aid) Rules 1964, and PARA 1305 post.

4 See PARA 1349 post.

5 *Sherwood v Ray* (1837) 1 Moo PCC 353 at 397, per Parke B; *Bishop of Winchester v Wix* (1869) LR 3 A & E 19 at 21. Nevertheless evidence is normally given orally (*Fyler v Fyler* (1854) 2 Spinks 69; *Edwards and Mann v Hatton* (1865) 13 LT 253), in which event the rules and practice of the common law will be followed in construing the evidence (*Burder v O'Neill* (1863) 9 Jur NS 1109 at 1110; see also *Bishop of Norwich v Pearse* (1868) LR 2 A & E 281; Phillimore, *Ecclesiastical Law* (2nd Edn) 959).

6 Eg in the Ecclesiastical Jurisdiction Measure 1963, ss 28 (a), (c), 36 (a), (b), 45 (1) (a), (c).

7 See PARA 1272 et seq ante.

8 Ecclesiastical Jurisdiction Measure 1963, s 81 (1). As to the powers of the High Court, see CIVIL PROCEDURE.

UPDATE

1296 Procedure and practice in general

TEXT AND NOTES--1963 Measure ss 64, 65; 1964 Measure s 14, Schedule repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. Faculty Jurisdiction Rules 1967 replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047. As to new provisions for a single rule committee see PARA 1296A.

NOTE 2--SI 1965/251 replaced: see now Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

NOTE 6--1963 Measure ss 28, 36 repealed: Clergy Discipline Measure 2003 Sch 2.

NOTE 8--The Vicar-General's court of each of the provinces of Canterbury and York also has the same powers: 1963 Measure s 81(1); Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 8.

The 1963 Measure s 81 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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1296A. Rule Committee.

A rule committee consisting of (1) a diocesan bishop nominated by the Archbishops of Canterbury and York; (2) the Dean of Arches and Auditor; (3) one archdeacon nominated by the Archbishops of Canterbury and York; (4) two diocesan chancellors nominated by the Archbishops of Canterbury and York; (5) two diocesan registrars nominated by the Archbishops of Canterbury and York; (6) one person nominated by the Council for the Care of Churches; (7) two persons nominated by the Standing Committee of the House of Laity from among the members of that house, together with eleven other persons nominated for particular purposes, has been established¹. The members nominated for particular purposes are (i) for making rules relating to proceedings in the Court of Ecclesiastical Causes Reserved or a commission of review², one person who holds or has held high judicial office nominated by the Lord Chancellor; (ii) for making rules relating to cathedral churches, one member of the administrative body of a cathedral church nominated by the Appointments Committee of the General Synod, three persons having special knowledge of the conservation of cathedrals nominated by the Cathedrals Fabric Commission from among its members, and three persons nominated by the Association of English Cathedrals; (iii) for making rules relating to proceedings in respect of offences cognisable under the Ecclesiastical Jurisdiction Measure 1963 s 14 or disciplinary proceedings under the Clergy Discipline Measure 2003, a second diocesan bishop nominated by the Archbishops of Canterbury and York, the Prolocutor of the Lower House of the Convocation of Canterbury or a member nominated by him, and the Prolocutor of the Lower House of the Convocation of York or a member nominated by him³. The quorum of the committee is five members, but a member nominated for a particular purpose must not be included in a quorum for any other purpose⁴. The chairman of the committee must be the Dean of Arches and Auditor, unless he declines or is unable to act, when the chairman will be such other member of the committee as may be nominated by the Dean of Arches and Auditor after consultation with the Archbishops of Canterbury and York⁵. Subject to the provision as to its quorum, the committee may act notwithstanding any vacancy in its membership and may regulate its own procedure⁶.

The rule committee may make rules for carrying into effect the provisions of the Ecclesiastical Jurisdiction Measure 1963, the Faculty Jurisdiction Measure 1964, the Care of Cathedrals Measure 1990, the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, the Care of Cathedrals (Supplementary Provisions) Measure 1994, the Clergy Discipline Measure 2003 and the Care of Places of Worship Measure 1999⁷.

Any rule made under the former provisions continues in force and is deemed to have been made under the new provisions⁸. Any rules made under the new provisions must be laid before the General Synod and must not come into force until approved by it, whether with or without amendment⁹. Where the Business Committee determines that the rules do not need to be debated by the General Synod then, unless notice is given by a member of the Synod in accordance with its standing orders that he wishes the rules to be debated, or notice is so given by any member that he wishes to move an amendment to the rules, the rules are deemed to have been approved without amendment¹⁰.

¹ Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 25(1) (amended by the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 6).

2 le a commission of review appointed under the Ecclesiastical Jurisdiction Measure 1963 s 11: 1991 Measure s 25(2)(a).

3 Ibid s 25(2) (amended by the Church of England (Transfer of Functions) Order 1998, SI 1998/1715, Clergy Discipline Measure 2003 s 45(3), and the Care of Cathedrals (Amendment) Measure 2005 Sch 3 para 6). As to the Appointments Committee see PARA 383A. See also Constitutional Reform Act 2005 s 19, Sch 7 para 4 (protected functions of the Lord Chancellor).

4 1991 Measure s 25(3).

5 Ibid s 25(4).

6 Ibid s 25(5).

7 Ibid s 26(1); Care of Cathedrals (Supplementary Provisions) Measure 1994 s 9; Care of Places of Worship Measure 1999 s 5; Clergy Discipline Measure 2003 s 45(1). As to the particular matters in respect of which the rule committee may make provision see s 26(2), (3); 1994 Measure s 9; Church of England (Legal Aid) Measure 1994 Sch 2 para 3; Clergy Discipline Measure 2003 s 45(2).

8 1991 Measure s 27(1). The former provisions are the Ecclesiastical Jurisdiction Measure 1963 s 65, the Faculty Jurisdiction Measure 1964 s 14, and the Care of Cathedrals Measure 1990 s 16.

9 1991 Measure s 27(2).

10 Ibid s 27(3); Church of England (Miscellaneous Provisions) Measure 1995 s 14; SI 1998/1715. The Statutory Instruments Act 1946 applies to any rules approved by the General Synod as if they were statutory instruments and were made when so approved, and as if the 1991 Measure were an Act providing that the rules should be subject to annulment in pursuance of a resolution of either House of Parliament: 1991 Measure s 27(4). As to the Business Committee see PARA 383B.

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1297. Places where courts sit.

Any court, commission, committee or inquiry established or held by or under the provisions of the Ecclesiastical Jurisdiction Measure 1963 may be held in any place convenient to the court or other authority concerned, due regard being paid to the convenience of parties and witnesses¹.

¹ Ecclesiastical Jurisdiction Measure 1963, s 80.

UPDATE

1297 Places where courts sit

TEXT AND NOTE 1--This provision also applies to the Vicar-General's court of each of the provinces of Canterbury and York (see PARA 633A.2): 1963 Measure s 80; Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 7.

See *Re St Andrew's, Heddington* [1978] Fam 121 (when consistory court sits in a church, church is a 'court').

The 1963 Measure s 80 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(i) In general/1298. Rights of audience.

1298. Rights of audience.

In proceedings in the ecclesiastical courts a party may be legally represented, and rights of audience are accorded both to barristers¹ and solicitors². Provision is made for the right of either party to be represented by a friend or adviser in disciplinary proceedings³.

¹ See *Mouncey v Robinson* (1867) 37 LJ Eccl 8, and LEGAL PROFESSIONS vol 66 (2009) PARA 1109 et seq. Barristers are in this respect successors of the advocates formerly admitted to the Doctors' Commons Bar. Persons who had taken a doctor's degree in law in the University of Oxford or Cambridge and had studied the canon and civil law for five and latterly for three years were admitted by the Archbishop of Canterbury to the Doctors' Commons Bar to practise as advocates in the ecclesiastical courts: Ayl Par 53 et seq, 1 Burn's Ecclesiastical Law (4th Edn) 2-4. The college of advocates which became known as Doctors' Commons had been formed in 1511; it was incorporated in 1768 and existed until the middle of the nineteenth century when, on the creation of the Court of Probate and the Court for Divorce and Matrimonial Causes in 1857 (Court of Probate Act 1857, s 4 (repealed); Matrimonial Causes Act 1857, s 6 (repealed)), power was given to the college to dispose of its property and surrender its charter: see the Court of Probate Act 1857, ss 116, 117 (repealed). Only laymen could belong to Doctors' Commons: *R v Archbishop of Canterbury* (1807) 8 East 213. See also PARA 1276 note 2 ante.

² See the Solicitors Act 1974, s 19 (1) (c), and LEGAL PROFESSIONS vol 65 (2008) PARA 729 et seq. Before solicitors were admitted to practise in ecclesiastical courts the practitioners who had the management of causes before ecclesiastical courts were called proctors: see Ayl Par 421 et seq; 3 Burn's Ecclesiastical Law (4th Edn) 198-201; *Burch v Reid* (1873) LRA & E 112. A proctor or procurator was one who had the management committed to him of the law concerns of another, who stood to him in the relation of client or principal: Ayl Par 421; 3 Bl Com (14th Edn) 25. A party appointed his proctor to appear and act in a cause for him by a warrant under his hand called a proxy: 3 Burn's Ecclesiastical Law (4th Edn) 376; *Prankard v Deacle* (1828) 1 Hag Ecc 169 at 185 et seq, *Fry and Greata v Treasure* (1865) 2 Moo PCCNS 539. Until his authority was withdrawn the proctor was dominus litis (ie the person who had the control of the suit): *Obicini v Bligh* (1832) 8 Bing 335 at 352, per Tindal CJ.

³ See the Ecclesiastical Jurisdiction Measure 1963, ss 24 (2), 33 (5), 42 (4); Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 61; and PARAS 1363, 1365 post.

UPDATE

1298 Rights of audience

NOTE 3--1963 Measure ss 24, 33 repealed: Clergy Discipline Measure 2003 Sch 2.

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1299. Contempt of court.

Any act or omission in connection with proceedings before any court or commission established under the Ecclesiastical Jurisdiction Measure 1963 which, if occurring in connection with High Court proceedings, would have been a contempt of the High Court is a contempt of that ecclesiastical court or commission¹. Any proceedings in respect of the contempt must be brought in the High Court, which has the same jurisdiction and powers in relation to it as if it had been a contempt of the High Court².

1 Ecclesiastical Jurisdiction Measure 1963, s 81 (2).

2 Ibid s 81 (3); *R v Daily Herald, ex parte Bishop of Norwich* [1932] 2 KB 402. See CONTEMPT OF COURT.

UPDATE

1299 Contempt of court

TEXT AND NOTES--1963 Measure s 81(2), (3) substituted: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 11; Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 8. If any person does or omits to do anything in connection with proceedings before, or with an order made by, a court or commission or Vicar-General's court (see PARA 633A.2) which is in contempt of that court or commission by virtue of any enactment or which would, if the court or commission had been a court of law having power to commit for contempt, have been in contempt of that court, the judge, or presiding judge of the court or the presiding member of the commission may certify the act or omission under his hand to the High Court: 1963 Measure s 81(2) as substituted. 'Order' includes a special citation under the 1991 Measure s 13(2) or the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 6(1) and an injunction under the 1991 Measure s 13(4) or the 1994 Measure s 6(3): 1963 Measure s 81(4); 1991 Measure Sch 4 para 11; 1994 Measure Schedule para 8. On receiving a certificate the High Court may inquire into the alleged act or omission and after hearing any witnesses and any statement that may be offered in defence, exercise the same jurisdiction and powers as if that person had been guilty of contempt of the High Court: 1963 Measure s 81(3) as substituted.

The 1963 Measure s 81 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(ii) Costs, Fees and Legal Aid/1300. Order for costs.

(ii) Costs, Fees and Legal Aid

1300. Order for costs.

Any court or commission having jurisdiction under the Ecclesiastical Jurisdiction Measure 1963 has power at any stage of the proceedings to order any party to give security for costs¹.

Any court, commission, committee or examiner has a discretion² to make an order against any party for the payment of taxed costs, of a specified proportion of taxed costs³, of taxed costs up to a specified stage of the proceedings, or of a specified gross sum in lieu of taxed costs⁴. A court hearing an appeal or petition for review in disciplinary proceedings may additionally deal with the costs of the proceedings which gave rise to the appeal or petition⁵.

1 Ecclesiastical Jurisdiction Measure 1963, s 60 (1). 'Costs' includes fees, charges, disbursements, expenses and remuneration: s 60 (4).

2 Account may be taken of the fact that the whole or part of the costs of a complainant or accused person are being or have been met out of the legal aid fund established under s 59 (as to which see PARA 1305 post): s 60 (2).

3 Ibid s 60 (2).

4 Ibid s 60 (3). No party to proceedings for an offence under the Measure is entitled to recover any costs except under an order made under s 60 (2): Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 53 (1).

5 Ibid r 53 (2).

UPDATE

1300 Order for costs

TEXT AND NOTES--1963 Measure s 60 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 1--The Vicar-General's court in proceedings instituted under the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 4 (see PARA 633A.2) also has power to order security for costs: 1963 Measure s 60(1); 1994 Care of Cathedrals Measure Schedule para 4. This power is now subject, in the case of a party to whom legal aid is granted under Church of England (Legal Aid) Measure 1994, to rules made under 1994 Legal Aid Measure s 4 (see PARA 1305): 1963 Measure s 60(1); 1994 Legal Aid Measure Sch 2.

NOTES 2, 3--Amended so as to refer to fund maintained under 1994 Legal Aid Measure: 1963 Measure s 60(2); 1994 Legal Aid Measure Sch 2. Where an order for payment of taxed costs has been made under the 1963 Measure s 60(2) any party to the proceedings may appeal to the chancellor of the diocese in which the proceedings took place against the registrar's taxation, and on any such appeal the chancellor may confirm or vary the registrar's taxation: 1963 Measure s 60(5); Care of Churches and

Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 9. The appeal must be lodged in the prescribed manner: 1963 Measure s 60(6); 1991 Measure Sch 4 para 9.

NOTE 3--'Court' includes a Vicar-General's court: 1963 Measure s 60(2); 1994 Care of Cathedrals Measure Schedule para 4.

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1301. Taxation and recovery of costs.

In disciplinary proceedings costs are taxed by the registrar, who may require the attendance of witnesses and the production of necessary documents¹. Taxation proceedings are commenced by lodging with the registrar an application for taxation, together with the bill of costs and all necessary papers and vouchers, and serving copies on the other party, whereupon the registrar must fix a day for the taxation and give notice of it to the parties². In deciding the amount of the costs to be allowed the registrar has regard to the current High Court scales³. Any party or his solicitor may apply to tax the costs on the common fund basis⁴.

Any party to the taxation who is dissatisfied with any decision of the registrar may within seven days after the decision lodge with him and serve on the other party an application for a review of the taxation by the judge, who must fix a time and place for the review and require the registrar to give notice to both parties⁵. Unless the judge otherwise directs, no further evidence may be received on the review and no ground of objection may be raised which was not set out in the application⁶. On the review the judge may exercise all powers and discretions vested in the registrar⁶.

Costs ordered to be paid in any proceedings under the Ecclesiastical Jurisdiction Measure 1963 may be recovered as if the sum due were a contract debt, by action in the county court for the district in which the award was made or, if the sum recoverable exceeds that court's jurisdiction, in the High Court⁷. In recovery proceedings a certificate purporting to be signed by the registrar is conclusive evidence of the sum due to be paid by the person mentioned in it⁸.

1 Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 54 (1). For fees payable on the taxation of costs, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table IV.

2 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 54 (2), (3). For the form of application for taxation, see Appendix, Form 51, and Court Forms. The registrar may proceed in the absence of a party (other than the applicant) who he is satisfied had notice: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 54 (4).

3 Ibid r 54 (5).

4 Ibid r 55 (1), applying r 54 (2)-(4). In taxing such costs the registrar must have regard to the High Court practice applicable to costs on the common fund basis: r 55 (2).

5 Ibid r 56 (1)-(3). Where the diocesan registrar taxes the costs 'judge' means the judge of the consistory court; in any other case it means the Dean of the Arches and Auditor or his deputy: r 56 (5). For the form of application, see Appendix, Form 52, and Court Forms.

6 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 56 (4).

7 Ecclesiastical Jurisdiction Measure 1963, s 61 (1). The payment of legal aid is in satisfaction of the assisted person's liability for his costs, but a payment in part satisfaction does not affect his liability to pay the remainder: Ecclesiastical Jurisdiction (Legal Aid) Rules 1964, r 6 (2). As to these rules, see PARA 1305 post. As to the enforcement of an order for costs in faculty proceedings, see also PARA 1328 post.

8 Ecclesiastical Jurisdiction Measure 1963, s 61 (2).

UPDATE

1301 Taxation and recovery of costs

TEXT AND NOTES 7, 8--1963 Measure s 61 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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1302. Payment of costs by Church Commissioners.

If satisfied that the costs and expenses are reasonable in amount¹ the Church Commissioners may at their absolute discretion pay the whole or part of any costs or expenses incurred (1) by any archbishop or bishop, other than an accused person, in or in relation to or directly or indirectly arising out of legal proceedings authorised, taken or contemplated (even if not eventually taken) by any person in respect of any offence cognisable under the Ecclesiastical Jurisdiction Measure 1963 or in relation to any declaration pursuant upon a judgment, order or decree of a secular court², or (2) by any person nominated to promote proceedings in respect of any such offence³.

1 Ecclesiastical Jurisdiction Measure 1963, s 58 proviso.

2 Ibid s 58 (a). As to such declarations, see PARA 1374 post. As to the commissioners, see PARA 363 et seq ante.

3 Ibid s 58 (b).

UPDATE

1302 Payment of costs by Church Commissioners

TEXT AND NOTES--The commissioners may also pay the costs of any bishop or person designated by him to act on his behalf for the purposes of the Care of Cathedrals (Supplementary Provisions) Measure 1994 (see PARA 633A.2) in or in relation to or directly or indirectly arising out of legal proceedings authorised, taken or contemplated in the Vicar-General's court under the 1994 Measure s 4: 1963 Measure s 58(c); 1994 Measure Schedule para 3.

The 1963 Measure s 58 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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1303. Payment of costs and expenses by Central Board.

Save in so far as they are payable by any other person¹ the Central Board of Finance of the Church of England² must pay the costs and expenses of all courts, commissions, committees and examiners³ constituted or appointed under the Ecclesiastical Jurisdiction Measure 1963 for the purpose of disciplinary proceedings⁴. The Church Commissioners have power at their absolute discretion to contribute out of their general fund such sums as they think fit to relieve the board's liability to pay these costs and expenses⁵.

1 le under the Ecclesiastical Jurisdiction Measure 1963 or any order or rule for the time being in force. See eg ss 58-61, and PARA 1300 et seq ante.

2 As to the Central Board, see PARA 394 ante.

3 As to examiners, see PARA 1282 ante, 1363 post.

4 Ecclesiastical Jurisdiction Measure 1963, s 62 (1). Before paying any costs and expenses the board must first be satisfied that they are reasonable in amount: s 62 (1) proviso.

5 Ibid s 62 (2). As to the commissioners' general fund, see PARA 1234 ante.

UPDATE

1303 Payment of costs and expenses by Central Board

TEXT AND NOTES--The Central Board must also pay the costs and expenses of the Vicar-General's court for the purpose of proceedings instituted under the Care of Cathedrals (Supplementary Provisions) Measure 1994 s 4 (see PARA 633A.2): 1963 Measure s 62; 1994 Measure Schedule para 5.

The 1963 Measure s 62 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 5--Reference to 'the board' is now reference to 'the Archbishops' Council': 1963 Measure s 62(2) (amended by SI 2007/1556).

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1304. Fees.

The fees to be demanded, taken and received by any legal officer as remuneration for his performance of the duties of his office in or in connection with any proceedings or contemplated proceedings or otherwise under or arising out of the provisions of the Ecclesiastical Jurisdiction Measure 1963 are fixed as provided by the Ecclesiastical Fees Measure 1962, notwithstanding that he is not a legal officer within the meaning of that Measure¹.

¹ Ecclesiastical Jurisdiction Measure 1963, s 63. In the Ecclesiastical Fees Measure 1962 'legal officer' means any person who carries out the duties of a legal officer in respect of work relating to the provinces of Canterbury or York, or any diocese, archdeaconry or cathedral church within either of those provinces, and is by law or custom required or permitted to act: s 1 (2). The fees under this Measure are prescribed by the Legal Officers Fees (Ecclesiastical Jurisdiction) Order 1966, S.I. 1966 No. 149, and Legal Officers Fees Order 1975, S.I. 1975 No. 1087.

UPDATE

1304 Fees

TEXT AND NOTE 1--Fees arising out of the provisions of the Care of Cathedrals (Supplementary Provisions) Measure 1994 are to be fixed in the same way: 1963 Measure s 63; 1994 Measure Schedule para 6.

The 1963 Measure s 63 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

NOTE 1--As to current fees orders, see PARA 1204.

1962 Measure replaced: Ecclesiastical Fees Measure 1986. For definition of 'legal officer' see PARA 1204.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(3) PROCEDURE AND PRACTICE OF ECCLESIASTICAL COURTS/(ii) Costs, Fees and Legal Aid/1305. Legal aid.

1305. Legal aid.

The General Synod must constitute and maintain a legal aid fund to which the synod and the Church Commissioners may contribute such sums as they from time to time decide, and which is held on behalf of the synod by the Central Board of Finance¹. The Standing Committee of the General Synod² appoints a Legal Aid Committee charged with the administration of the fund and, subject to and in accordance with rules³ made by the synod, the board may pay out of the fund in accordance with the Legal Aid Committee's written certificate the whole or such part as the certificate may authorise of the costs of any complainant or accused person in or in relation to or directly or indirectly arising out of any legal proceedings authorised, taken or contemplated before any commission, committee or examiner (and notwithstanding that proceedings are not eventually taken) in respect of any offence under the Ecclesiastical Jurisdiction Measure 1963⁴.

A written application for legal aid⁵ may be made by any complainant in respect of the whole or part of any costs properly incurred up to the time of the nomination of a promoter⁶ or by an accused person in respect of the whole or part of any costs properly incurred up to and including the trial or pursuant to any appeal or review⁷. The committee may not refuse an application without affording the applicant the opportunity of making oral representations to it in person or by solicitor or counsel⁸. The secretary must notify the applicant in writing of the committee's decision⁹, which may be limited to the costs incurred up to a specified stage of the proceedings or to a specified proportion of his costs or to a specified sum¹⁰. If legal aid is granted a certificate is issued, which may in certain circumstances be cancelled, revoked or discharged¹¹.

If it appears necessary to the assisted person's solicitor to lodge an appeal, to instruct more than one counsel, to obtain or tender expert evidence, to bespeak a transcript or to do any unusual act or one which involves unusual expenditure and for which the certificate does not already provide he must apply to the committee for authority to take the step in question¹².

The payment of legal aid is limited to the amount of the assisted person's taxed costs¹³, although in certain circumstances the committee may authorise the payment of a fair remuneration for work actually and reasonably done¹⁴.

1 Ecclesiastical Jurisdiction Measure 1963, s 59 (1); Synodical Government Measure 1969, s 2 (2). As to the General Synod, see PARA 390 et seq ante; as to the commissioners, see PARA 363 et seq ante; and as to the board, see PARA 394 ante.

2 As to the Standing Committee, see PARA 392 ante.

3 The rules have to be laid before the General Synod and do not come into force until approved by the Synod: Ecclesiastical Jurisdiction Measure 1963, s 59 (3); Synodical Government Measure 1969, s 2 (2). For rules made under this power, see the Ecclesiastical Jurisdiction (Legal Aid) Rules 1964.

4 Ecclesiastical jurisdiction Measure 1963, s 59 (2); Synodical Government Measure 1969, s 2 (2).

5 The application must be lodged with the secretary of the Legal Aid Committee: Ecclesiastical Jurisdiction (Legal Aid) Rules 1964, r 4 (2). It must specify the registry in which the complaint was lodged and the number assigned to it, the applicant's general financial position, what assistance is or may be available towards his costs and (if he is a complainant) his qualification for laying the complaint, and must contain a written undertaking to comply with the rules and to inform the committee of any change in the applicant's financial position: r 4 (3).

- 6 Ibid r 3 (a).
- 7 Ibid r 3 (b).
- 8 Ibid r 5 (2).
- 9 Ibid r 5 (3).
- 10 Ibid r 5 (1).
- 11 See ibid rr 6 (1), 7, 8.
- 12 Ibid r 10 (1).
- 13 Ibid r 11 (1).
- 14 See ibid r 11 (3).

UPDATE

1305 Legal aid

TEXT AND NOTES--Replaced: Church of England (Legal Aid) Measure 1994.

The synod will continue to maintain a legal aid fund to which the synod and the Church Commissioners may contribute such sums as each shall from time to time decide¹. The fund will be administered by a Legal Aid Commission, appointed by the Appointments Committee of the General Synod², and held by the Central Board of Finance on behalf of the synod. The Board may only make such payments out of the fund as are authorised by a certificate in writing issued by the Legal Aid Commission³.

Applications may be made to the Commission by specified persons for financial assistance in respect of costs incurred by them in connection with certain specified proceedings⁴, whereupon the Commission may issue a certificate authorising payment out of the fund of the whole or part of the costs incurred by the applicant after the date of the issue of the certificate⁵. In deciding whether to grant legal aid, the Commission must have regard to all the circumstances of the case and, in particular, must consider the financial resources of the applicant (including the financial resources of the spouse or civil partner of the applicant)⁶. Legal aid should not be granted if it appears that the applicant could afford to proceed without it⁷ and the applicant must show that he has reasonable grounds for taking, defending or being a party to, the proceedings⁸. Where a certificate is issued for the payment of the costs or part of the costs of any person the payment must be made to the solicitor who has acted for that person⁹. The grant of legal aid does not affect the relationship between, or rights of, counsel, solicitor and client or any privilege arising out of that relationship or the rights or liabilities of other parties to the proceedings, or the principles on which the discretion of any court or tribunal is normally exercised, except as expressly provided by rules¹⁰.

The Archbishops' Council is empowered to make such rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, these provisions¹¹. Such rules may make particular provision as to the procedure for applications for legal aid¹², as to the information to be furnished by any person applying for or receiving legal aid and the provision of information by solicitors or counsel¹³, for the amendment, revocation or discharge of certificates¹⁴, for regulating the procedure in legal aid proceedings, particularly with regard to costs¹⁵, for the enforcement of any order or agreement for costs made in favour of a person to whom legal aid is granted¹⁶, to enable the chairman or a specified officer of the Commission, in specified circumstances, to issue an interim certificate on behalf of the Commission for the payment of the costs, or part of the costs, incurred by any person before the

determination of that person's application¹⁷, and to enable the Commission to appoint committees to carry out certain of its functions¹⁸.

The 1994 Measure contains transitional provisions¹⁹ and extends to the whole of the provinces of Canterbury and York except the Channel Islands and the Isle of Man, but may be applied to the Channel Islands and may extend to the Isle of Man²⁰.

1 Church of England (Legal Aid) Measure 1994 s 1(1).

2 Ibid s 1(2); Church of England (Transfer of Functions) Order 1998, SI 1998/1715. As to appointment of Commission see further 1994 Measure s 1(4). As to the Appointments Committee see PARA 383A.

3 Ibid s 1(3). The functions of the Central Board of Finance, under s 1(3), are transferred to the Archbishops' Council: National Institutions of the Church of England (Transfer of Functions) Order 2007, SI 2007/1556.

4 1994 Measure s 2(1). Applications may be made in respect of (i) proceedings in any ecclesiastical court or before any commission, committee or examiner in respect of an offence under Ecclesiastical Jurisdiction Measure 1963, by any accused person (and any disciplinary tribunal for misconduct under the Clergy Discipline Measure 2003); (ii) proceedings on an inquiry under Incumbents (Vacation of Benefices) Measure 1977 Pt I, conducted by a provincial tribunal (see PARAS 633A-G), by the incumbent concerned in the proceedings; (iii) proceedings under Pastoral Measure 1983 Sch 4 (including any interview by a pastoral committee), by any person having a right to compensation under Sch 4 paras 1-4 (see PARA 888-891) (and including that Schedule as applied by the Clergy Discipline Measure 2003 s 41); (iv) proceedings under Pastoral Measure 1983 Sch 4 as extended by Incumbents (Vacation of Benefices) Measure 1977 s 13(3), by any incumbent having a right to compensation conferred by 1977 Measure s 13(1) (see PARA 889-891); (v) proceedings on an appeal under any canon made in pursuance of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 s 7 against revocation of a licence granted to a minister, deaconess, lay worker or stipendiary reader (see PARAS 702, 761, 765, 767), by the appellant; (vi) proceedings on an appeal under the 1963 Measure s 50 against an intended deposition of a priest or deacon from Holy Orders (see PARA 1375); 1994 Measure Sch 1 (amended by the Clergy Discipline Measure 2003 s 44(5)). The Standing Committee of the General Synod may vary this list by rules: 1994 Measure s 4(2). As to procedure for making of rules see *ibid* s 4(4)-(6).

5 Ibid s 2(2). The Commission may issue a certificate for the payment of the costs, or part of the costs, incurred by any person subject to such conditions specified in the certificate as it thinks fit: *ibid* s 2(3). If the Commission considers that legal aid should be granted in respect of some, but not all, of the costs incurred, it may issue a certificate for (a) payment of a contribution towards those costs of a specified amount; (b) payment of costs subject to a contribution from the applicant of a specified amount; (c) payment of a specified proportion of those costs; (d) payment of the costs of, or a specified proportion of the costs of, a specified part of the proceedings: *ibid* s 2(4).

6 Ibid s 2(5) (amended by SI 2005/3129).

7 1994 Measure s 2(5).

8 Ibid s 2(6).

9 Ibid s 3(1). Where a certificate is issued under s 2, the solicitor who has acted for the applicant is not entitled to receive from, or on behalf of, the applicant more than the amount, if any, by which the total amount of the costs incurred, as taxed or assessed, exceeds the amount payable to that solicitor under the certificate: s 3(2). As to rules making provision as to taxation and assessment, see *ibid* s 4.

10 Ibid s 3(3). As to rules see *infra*.

11 Ibid s 4; Church of England (Transfer of Functions) Order 1998, SI 1998/1715. See Church of England (Legal Aid) Rules 1995, SI 1995/2034 (amended by SI 2006/1939). As to procedure for making of rules, see 1994 Measure s 4(4)-(6); SI 1998/1715.

12 1994 Measure s 4(1)(a).

13 Ibid s 4(1)(b).

14 Ibid s 4(1)(c).

15 Particular provision may be made as to (i) the taxation of costs in respect of which legal aid is granted; (ii) the assessment of those costs, without taxation, by such person as may be specified in the rules, but with a view to allowing as nearly as may be the same amount as on taxation; (iii) the cases in which and the extent to which a person to whom legal aid is granted may be required to give security for costs, and the manner in which it may be given: *ibid* s 4(1)(d).

16 Ibid s 4(1)(e).

17 Ibid s 4(1)(f).

18 Ibid s 4(1)(g).

19 See *ibid* s 5.

20 See *ibid* s 6.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(i) In general/1306. The faculty jurisdiction in general.

(4) PROCEEDINGS RELATING TO FACULTIES

(i) In general

1306. The faculty jurisdiction in general.

A faculty is a special licence or dispensation granted by an Ordinary¹ authorising a person to do something which otherwise could not lawfully be done². In English ecclesiastical law the term has come to be applied mainly to the authorisation of works and purposes involving alterations³ to the fabric or contents of churches, to churchyards or (in some measure) to consecrated burial grounds other than churchyards⁴. The necessity for obtaining a faculty for the execution of such works or purposes is in most cases associated with the legal effects of consecration⁵. The consecration of a piece of land has the effect of bringing it and everything on it within the jurisdiction of the Ordinary, whose permission is thereafter generally necessary before any alteration can be lawfully effected⁶. The jurisdiction of the Ordinary is normally exercised by the chancellor of the diocese as judge of the consistory court⁷. Its main purposes are to protect the interests of succeeding generations of parishioners, to settle disputes between interested parties and to provide safeguards against illegality and ill-considered change⁸. A duty is imposed on ministers and church wardens to comply with the requirements of the faculty jurisdiction⁹.

1 For the meaning of 'Ordinary', see PARA 458 ante. See also PARA 1275 text and note 5 ante.

2 See PARA 1273 note 6 ante.

3 In this context 'alteration' has an extended meaning and includes the addition of something that was not there before, and the removal, repair, renovation or alteration of something already there.

4 As to faculties for the disinterment of bodies, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125 et seq.

5 See PARA 1068 et seq ante. The unconsecrated curtilage of a church is however, within the faculty jurisdiction, and a licensed chapel may by order of the bishop be made subject to the faculty jurisdiction, even though it has not been consecrated (see PARA 1308 post): see also the Report of the Church Assembly Commission on Fees and Faculties (CIO 1959) 52, where the suggestion of a necessary connection between the faculty jurisdiction and consecration is said to have no real historical basis.

6 *Lee v Hawtrey* [1898] p 63; *Palmer v Bishop of Exeter* (1723) 1 Stra 576; *Nickalls v Briscoe* [1892] P 269. For exceptions, see PARA 1309 post.

7 See PARA 1275 ante. Faculty proceedings may, however, be heard and disposed of by the bishop (sitting, alone or with the chancellor) if and insofar as provision in that behalf is made in the letters patent appointing the chancellor: Ecclesiastical Jurisdiction Measure 1963, s 46 (1) proviso: see PARA 1278 ante. All faculty proceedings, including those which involve matter of doctrine, ritual or ceremonial, are cognisable at first instance by the consistory court. As to appeals, see PARAS 1287, 1290 ante. In certain cases of repair, redecoration or alternation to an existing heating system, permission may, in the absence of opposition, be granted by an archdeacon's certificate instead of a faculty: see PARA 1331 post.

8 See Kempe, Memorandum as to the Law of Faculties, appended to the Report of the Archbishops' Committee on Ancient Monuments (Churches) (1914, reprinted 1935). The memorandum is quoted at length in Cripps, Law of Church and Clergy (8th Edn) 147 et seq. See also the Report of the Church Assembly Commission on Fees and Faculties (CIO 1959) 48.

9 Revised Canons Ecclesiastical, Canon F13 para 3.

UPDATE

1306 The faculty jurisdiction in general

TEXT AND NOTE 7--Even where a bishop may have power to hear faculty proceedings it is constitutionally preferable for the chancellor to deal with such cases: *Re St Mary's, Barnes* [1982] 1 All ER 456.

As to the delegation to archdeacons of the power to grant faculties see PARA 1331-1333.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(i) In general/1307. History of the faculty jurisdiction.

1307. History of the faculty jurisdiction.

There is evidence of the assertion of the bishop's power of control over the fabric of churches in his diocese as long ago as the thirteenth century¹, but it seems likely that in mediaeval times this control was exercised mainly through the process of visitation. Even when recourse to the consistory court became more common, faculty proceedings appear to have been largely concerned with rights and privileges, for example question concerning rights to pews. It was not until the nineteenth century that the faculty jurisdiction in its present form and extent became fully effective. Controversies over such matters as the introduction of ornaments² contributed to a general recognition of the legal obligation to obtain a faculty for any alterations affecting a church or its contents. For many years past that obligation has been regarded as unquestionably binding in law, and it has been widely, though perhaps not universally, observed in practice³. The faculty jurisdiction is now, in many of its aspects, the subject of legislation⁴.

1 A constitution of Otho, legate of Gregory IX, made in a national synod in 1237 contained the following injunction: 'We stricly forbid rectors of churches to pull down ancient consecrated churches without the consent and licence of the bishop of the diocese, under pretence of raising a more ample and fair fabric. Let the diocesan consider whether it will be more expedient to grant or deny a licence': 2 Johnson's Ecclesiastical Laws 1237.

2 See PARA 953 et seq ante.

3 See the Report of the Church Assembly Commission on Fees and Faculties (CIO 1959) 48, 49.

4 See eg in addition to the relevant provisions of the Ecclesiastical Jurisdiction Measure 1963, the Faculty Jurisdiction Measure 1964, the Faculty Jurisdiction Rules 1967 S.I. 1967 No 1002, and the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251.

The Channel Islands, though forming part of the diocese of Winchester, are excluded from the jurisdiction exercisable by the consistory court of that diocese (see the Ecclesiastical Jurisdiction Measure 1963, ss 1 (1), 84); nor are they subject to the provisions of the Faculty Jurisdiction Measure 1964 (s. 17). The authorities responsible for exercising a corresponding system of control are the Deans of Jersey and Guernsey.

The Ecclesiastical Jurisdiction Measure 1963 does not at present extend to the Isle of Man, but provision may be made for such extension by an Act of Tynwald, subject to such modifications as may be specified in the Act: ss 66 (1), 85. The Faculty Jurisdiction Measure 1964 does not apply to the Isle of Man: s 17 (1).

UPDATE

1307 History of the faculty jurisdiction

NOTE 4--SI 1967/1002 replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047. SI 1965/251 replaced: SI 1998/1713.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(i) In general/1308. Places within the faculty jurisdiction.

1308. Places within the faculty jurisdiction.

Despite the relevance of consecration for purposes of the faculty jurisdiction¹, consecrated and land subject to the faculty jurisdiction are not co-extensive categories. In some cases unconsecrated land and buildings are, or may be made, subject to the faculty jurisdiction. On the other hand, consecrated land and building are in some cases excluded by law from the jurisdiction of the bishop as Ordinary, while in some other cases they may be treated in practice as though they were not subject to it².

When unconsecrated land forms, or is part of, the curtilage³ of a church within the jurisdiction of a court, that has the same jurisdiction over the land as over the church⁴. In the case of a building licensed for public worship, the bishop of the diocese may be order direct that it shall be subject to the jurisdiction of the consistory court, if he considers that circumstances have arisen which make this desirable⁵; the building will then, for the period specified in the order, be subject, together with its furnishings and contents, to the jurisdiction of the court as though it were a consecrated church⁶. Guild churches are within the faculty jurisdiction⁷.

1 See PARA 1306 ante.

2 See PARA 1309 post.

3 The curtilage is in effect an integral part of the church: it is such part of the churchyard which physically adjoins the church as is required to form some necessary or useful purpose of the church building: *Re St George's church, Oakdale* [1975] 2 All ER 870. Church and curtilage must be occupied together and must belong together in a physical sense: *Re St John's Church, Bishop's Hatfield* [1967] P 113, 2 All ER 403.

4 Faculty Jurisdiction Measure 1964, s 7 (1). This provision, which was expressed to be for the avoidance of doubt, did not render unlawful any act done or proceedings taken in good faith before the passing of the Measure (i.e on 15th April 1964), nor did it require the issue of faculties confirming such acts: s 7 (2). As to the principles on which the jurisdiction should be exercised in relation to an unconsecrated curtilage, with particular reference to proposals for secular user, see *Re St Peter's, Bushley Heath* [1971] 2 All ER 704, [1971] 1 WLR 357, where the opinion was expressed by Chancellor Newson that the court has a greater, if undefined, latitude than in the case of consecrated land. See also *Re St John's Church, Bishop's Hatfield* [1967] P 113, [1966] 1 All ER 403; *Re Christ Church, Chislehurst* [1974] 1 All ER 146, [1973] 1 WLR 1317; *Re St George's Church, Oakdale* [1975] 2 All ER 870; and PARA 1074 ante.

5 Faculty Jurisdiction Measure 1964, s 6 (1).

6 Ibid s 6 (2). Every such order must be registered in the diocesan registry (s. 6 (3)), and is revocable by the bishop at any time (s. 6 (4)). The growing number of instances in which places of worship are dedicated, not consecrated, gives added importance to this provision: see the Report of the Church Assembly Commission on Fees and Faculties (CIO 1959) 55.

7 The Faculty Jurisdiction Measures 1964 applies to guild churches mutatis as it applies to parish churches: City of London (Guild Churches) Act 1952, s 26 (2). As to persons having an interest in faculty proceedings relating to guild churches, see PARA 607 ante.

UPDATE

1308 Places within the faculty jurisdiction

TEXT AND NOTES--Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 11(1) declares that, for the avoidance of doubt and without prejudice to the jurisdiction of

consistory courts under any enactment or rule of law, the jurisdiction of the consistory court of a diocese applies to all parish churches in the diocese and the churchyards and articles appertaining to them.

A building licensed by the bishop for public worship according to the rites and ceremonies of the Church of England and all articles appertaining to it is subject to the jurisdiction of the consistory court as though the building were a consecrated church: *ibid* s 11(2). However, where, after consultation with the advisory committee, the bishop considers that any licensed building should not be subject to the faculty jurisdiction he may by order direct accordingly: *ibid* s 11(3).

Where the bishop, after consultation with the advisory committee, considers that any article appertaining to a licensed building, in respect of which an order directing that it should not be subject to the faculty jurisdiction is in force, should be subject to the faculty jurisdiction by reason of its being (i) of outstanding architectural, artistic, historical or archaeological value, or (ii) of significant monetary value, or (iii) at special risk of being stolen or damaged, he may by order direct that the article must be subject to the jurisdiction of the consistory court during a period specified in the order: *ibid* s 11(4). Any article in respect of which an order is in force must, during the specified period, be subject to the jurisdiction of the court as though it were an article appertaining to a consecrated church: *ibid* s 11(5).

Orders under *ibid* s 11(3) or (4) may be varied or revoked by an order made by the bishop after consultation with the advisory committee: *ibid* s 11(6). An order subjecting an article to the faculty jurisdiction does not render unlawful any act done before the making of the order nor require the issue of faculties confirming such acts: *ibid* s 11(7).

The chancellor of a diocese must give written guidance to all parochial church councils, ministers and churchwardens in the diocese as to those matters within the jurisdiction of the consistory court which he for the time being considers, after consultation with the advisory committee, to be of such a minor nature that they may be undertaken without a faculty: *ibid* s 11(8).

The bishop must send every order made under the above provisions to the diocesan registrar, who must register the order in the diocesan registry: *ibid* s 28.

NOTES 3, 4--See also *Re St Mary Magdalene, Paddington* [1980] 1 All ER 279.

TEXT AND NOTE 5--1964 Measure s 6(1) amended to refer only to orders made prior to the coming into force of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 11: *ibid* Sch 7.

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1309. Restrictions upon the exercise of the faculty jurisdiction.

Any places where the bishop is not the Ordinary¹, such as cathedrals², peculiars³ and the chapels of colleges at Oxford and Cambridge⁴, are outside the faculty jurisdiction and in most cases can be said to grant their own permission, as Ordinary⁵, although where the bishop is visitor he may, in the exercise of his visitatorial powers, order the removal of anything unlawful⁶.

The position of consecrated chapels in cemeteries, schools, hospitals and other institutions or in private houses is not sufficiently clear to justify any general statement of the law⁷. The applicability of the faculty jurisdiction may depend to some extent on whether the chapel was consecrated for the purpose of public worship⁸. In any case it seems that in practice applications for faculties are not usually made in respect of such chapels⁹.

There has been uncertainty also about the exercise of control over alterations to a private chapel or private aisle which forms part of a parish church. With a view to meeting the difficulty, provision has been made whereby, on the application of an incumbent or parochial church council, a faculty may be granted vesting any privately owned part of a church¹⁰ in the person or body in whom the church is vested¹¹. This would remove any doubt as to whether the part so vested was within the faculty jurisdiction.

A building or part of a building which, in a parish without a parish church, is designated by the bishop as the parish center of worship¹² is not by virtue of that designation made subject to the faculty jurisdiction¹³.

Consecrated burial grounds not belonging to a church (for example, the consecrated part of a local authority cemetery) are recognised as being subject in principle to the faculty jurisdiction¹⁴, but it seems that in practice the jurisdiction is exercised for limited purposes only, as in cases of exhumation¹⁵ and perhaps also of the removal of monuments¹⁶.

Land and building which have been subject to the faculty jurisdiction may in certain circumstances, by virtue of statutory provisions, cease to be so subject. This will normally occur in cases where, under a pastoral scheme or a redundancy scheme, consecrated buildings or land are vested in the Church Commissioners or are appropriated to a use or uses specified in the scheme¹⁷. The vesting of consecrated buildings or land in the Redundant Churches Fund will have a similar result¹⁸. Further, where consecrated land is compulsorily, acquired by a purchasing authority, the obligations and restrictions imposed by ecclesiastical law in respect of the use of the land will, subject to compliance with certain conditions, cease to be applicable¹⁹.

The ecclesiastical courts have only limited power to authorise by faculty the use or the disposal of consecrated land or building for secular purposes²⁰.

1 See the Revised Canons Ecclesiastical, Canon C18 para 2, which provides that the bishop has within his diocese jurisdiction as Ordinary, except in places and over persons exempt by law or custom. See PARA 472 ante.

2 See the Cathedrals Measure 1963, s 10 (2) (b), (c), and PARA 621 ante.

3 See PARAS 454, 492 ante.

4 See PARA 1257 ante.

5 In the case of a parish church cathedral provision must be included in the constitution and statutes for conferring, on a specified body, powers similar to those exercisable with respect to the fabric, monuments, ornaments and churchyard by the dean and chapter in a dean and chapter cathedral: Cathedrals Measure 1963, s 10 (2) (c); see PARA 621 ante.

6 *Phillpotts v Boyd* (1875) LR 6 PC 435; *Palmer v Bishop of Exeter* (1723) 1 Stra 576.

7 Episcopal chapels would seem in any case to be clearly outside the faculty jurisdiction and subject only to the visitatorial powers of the archbishop.

8 See the Faculty Jurisdiction Measure 1964, s 3 (1), which (in making provision for faculties affecting monuments) implies that there may be consecrated buildings other than churches or chapels which have been consecrated for the purpose of public worship according to the rites of the Church of England; cf. the definition of 'church' in the Interpretation Measure 1925, s 3, and see note 10 infra.

9 See the Report of the Church Assembly Commission on Fees and Faculties (CIO 1959) 52.

10 'Church' in the Faculty Jurisdiction Measure 1964 must be interpreted as meanings any church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England: Interpretation Measure 1925, s 3.

11 Faculty Jurisdiction Measure 1964, s 1 (2); and see the Report of the Church Assmby Commission on Fees and Faculties (CIO 1959) 52. See further PARA 1313 post.

12 See the Pastoral Measure 1968, s 29.

13 Ibid s 29 (2) proviso (b). This provision is without prejudice to the bishop's power under the Faculty Jurisdiction Measure 1964, s 6, to direct that it shall be so subject: Pastrol Measure 1968, s 29 (2) proviso (b).

14 This applies equally to a consecrated burial ground which has been transferred to a local authority under the Open Spaces Act 1906: see s 11, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1163 et seq.

15 See PARA 1317 post, and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1019, 1125 et seq.

16 See Opinions of the Legal Board (5th Edn 1973) III/47.

17 Pastoral Measure 1968, s 61 (1): see PARA 1076 ante.

18 Ibid s 61 (2): see PARA 1076 ante.

19 See the Town and Country Planning Act 1971, s 128.

20 See PARAS 1056, 1073, 1074, 1080 ante.

UPDATE

1309 Restrictions upon the exercise of the faculty jurisdiction

TEXT AND NOTES 2, 5--Cathedrals Measure 1963 s 10 repealed with effect from the relevant date (see PARA 610A.1): Cathedrals Measure 1999 s 39(2), Sch 3.

NOTES 7-9--See *Re Tonbridge School Chapel (No 1) (Note)* [1993] 2 All ER 350 (faculty jurisdiction accepted in case of school chapel consecrated to divine worship).

TEXT AND NOTES 12, 13--Now Pastoral Measure 1983 s 29(4).

TEXT AND NOTE 17--Now also where consecrated land or buildings are vested in the Diocesan Board of Finance in pursuance of a redundancy scheme: 1983 Measure s 61(1).

NOTE 18--Now ibid s 61(2); Pastoral (Amendment) Measure 1994 s 7.

NOTE 19--1971 Act s 128 now Town and Country Planning Act 1990 ss 238-240.

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1310. Principles and practice of the faculty jurisdiction.

Ecclesiastical law, as administered in England until the middle of the nineteenth century, had a tradition of flexibility¹. This tradition, through modified by acceptance of the binding force of precedent² and by the inroads of legislation, has not been altogether lost, and evidence of its survival is to be found in many judgments of recent times. In faculty proceedings in particular (which now constitute most of the business of the ecclesiastical courts) emphasis has frequently been laid on the discretionary character of the jurisdiction³.

The court has a discretion either to refuse a faculty or to grant one for any purpose consistent with the existing law⁴. While the wishes of the incumbent, churchwardens and parochial church council carry great weight⁵, neither those wishes nor the views of the majority of parishioners are conclusive⁶; but proprietary rights are not to be ignored⁷.

The discretionary aspect of the jurisdiction is exemplified in the accepted practice of relaxing the strict requirements of the law in matters of minor importance. The court, it has been said, is not hungry after jurisdiction in really small matters of no general moment or significance⁸. Hence, although strictly speaking no alteration whatever should be made to the fabric or furnishings of a church without the authority of a faculty⁹ or, in appropriate cases, of an archdeacon's certificate¹⁰, the court does not in practice require application to be made for such items as hassocks and book-boxes¹¹ or minor current repairs¹².

In the case of a churchyard, the incumbent's permission is normally treated in practice as a sufficient authority for the erection of a monument and, provided that the proposed monument does not offend against such general directions as the chancellor may have laid down for the diocese, the requirement of a faculty is dispensed with¹³.

In cases where a need is shown for a provisional or interim authorisation of alterations in a church, chancellors have frequently thought it appropriate to issue a 'letter of licence', on the understanding that the full requirements of the faculty procedure will, so far as may be necessary, be complied with in due course¹⁴.

In exercising its discretion as to whether or not to grant a faculty the court is influenced by a number of factors, including doctrinal, legal, liturgical and artistic considerations and the wishes of interested or affected persons¹⁵. It is entitled to the advice of the diocesan advisory committee for the care of churches¹⁶, and may refer such advice to the Council for Places of Worship¹⁷.

The court's discretion is exercisable only within the bounds of the existing law. Thus, it cannot authorise the introduction of an illegal ornament¹⁸, and it must observe the restrictions imposed by statute or otherwise in respect of such matters as the erection of buildings on a disused burial ground¹⁹ or the use of consecrated ground for secular purposes²⁰.

In the case of every parochial church and chapel a record of all alterations, additions, removals or repairs must be kept in a book provided for the purpose, and the record must indicate where specifications and plans may be inspected if they are not deposited with the book²¹.

1 It was described by Sir Robert Phillimore as a flexible system of jurisprudence: see the Study of the Civil and Canon Law in its relation to the State, the Church and the Universities (1843) 52 et seq, quoted in Kemp, Introduction to Canon Law in the Church of England (1957) 76.

2 See PARA 1271 ante.

3 See eg *Re St Mary, Tyne Dock (No. 2)* [1958] P 156 at 165, 166, [1958] 1 All ER 1 at 6, 7, where Deputy Chancellor Wigglesworth, in discussing the principles which govern the exercise of the faculty jurisdiction, quoted with approval the observations of Chancellor Kempe in *St Luke's, Newcastle* (1912) (unreported) to the effect that the granting of a faculty such as the petitioners were seeking was a matter entirely in the discretion of the judge, who in the exercise of that discretion was bound to consider not only the interests of the parties to the suit before him but also those of present and future parishioners. As to flexibility in the application of the rubrics of the Book of Common Prayer, see PARA 955 ante.

4 A faculty is by definition a licence to do something which otherwise could not lawfully be done (see PARA 1273 note 6 ante), but it cannot sanction an illegality (see note 7 infra).

5 *Groves and Wright v Rector etc of Hornsey* (1793) 1 Hag Con 188; *Churchwardens of St John's, Margate v Parishioners etc of St John's, Margate* (1794) 1 Hag Con 198; *Clayton v Dean* (1849) 7 Notes of Cases 46 at 53; *Jackson v Singer and Carson* (1868) 37 LJ Eccl 9; *Evans v Slack and Smith* (1869) 39 LJ Eccl 38; *Re St Augustine, Haggerstone* (1877) Trist 60 at 63; *St Ethelburga Faculty Case* (1878) Trist 69; *Woodward v Parishioners of Folkestone Parish* (1880) Trist 177; *Rugg v Kingsmill* (1868) 5 Moo PCCNS 79 at 88. These cases refer to the powers of the vestry, which have been transferred to the parochial church council (see PARA 575 ante), which has, apparently, the same right to be heard as the vestry formerly had: *St Magnus-the-Martyr Parochial Church Council v Chancellor of the Diocese of London* [1923] P 38 at 45, per Sankey J. An irregularity in the proceedings of a parochial church council is not necessarily fatal: see *Thomas v Morris* (1823) 1 Add 470. For a case where a faculty for the erection of a gallery in a church was granted notwithstanding the vicar's opposition, see *Tattersall v Knight* (1811) 1 Phillim 232; and for a case relating to a churchyard in which the incumbent's objection was overruled, see *Re Little Gaddesden Churchyard, ex parte Cuthbertson* [1933] P 150.

6 *Groves and Wright v Rector etc of Hornsey* (1793) 1 Hag Con 188; *Churchwardens of St John's, Margate v Parishioners etc of St John's, Margate* (1794) 1 Hag Con 198 at 200; *Butterworth v Walker* (1765) 3 Burr 1689 at 1692; *Jackson v Singer and Carson* (1868) 37 LJ Eccl 9; *Evans v Slack and Smith* (1869) 38 LJ Eccl 38; *Woodward v Parishioners of Folkestone Parish* (1880) Trist 177; *Peek v Trower* (1881) 7 PD 21; *Nickalls v Briscoe* [1892] P 269; *Rector of St Anne's, Limehouse v Parishioners of St Anne's, Limehouse* [1901] P 73; *St Stephen's, Hampstead* (1912) 28 TLR 584; *St Paul, Bow Common* (1912) 28 TLR 584. As to the production of signed memorials as evidence of parishioners' opinions, see PARA 1324 note 3 post.

7 *Rector etc of St George's, Hanover Square v Steuart* (1740) 2 Stra 1126; *Maidman v Malpas* (1794) 1 Hag Con 205 at 211; *Rich v Bushnell* (1827) 4 Hag Ecc 164 at 172. In *Walter v Mountague and Lamprell* (1836) 1 Curt 253 at 260, Dr Lushington said 'I do not say whether or not if the rector be called upon to show cause and he obstinately opposes a faculty, the court may grant it'. But a rector cannot claim, as a matter of right, to make a vault under a chancel or affix a tablet on the walls: *Rich v Bushnell* supra at 171. If a faculty for work in the chancel, for which the rector's consent is necessary in law, is granted without that consent, the remedy lies not in prohibition, but in appeal: *Bulwer v Hase* (1803) 3 East 217. If the work is carried on without his consent, he can, in spite of the faculty, maintain an action of trespass against the party executing it: see at 220. As to fittings in the chancel, see *Nickalls v Briscoe* [1892] P 269 at 276.

8 See Phillimore, *Ecclesiastical Law* (2nd Edn) 1419, quoting Lord Stowell, and cf. the statement of Sir Alfred Kempe in the memorandum cited in PARA 1306 note 8 ante, where he said that the churchwardens are bound to exercise constant vigilance with regard to the state of the church and to execute necessary repairs without obtaining a faculty; the ecclesiastical courts repose confidence in the incumbent and churchwardens, and in matters of small moment will not censure them for having acted without the express authority of a faculty. The courts are not eager for jurisdiction in such cases, but if any doubt exists inquiry should be made of the registry whether it is safe to proceed without a faculty. This statement is quoted in Cripps, *Church and Clergy* (8th Edn) 148, 149. At the time Kempe was writing the churchwardens' legal responsibility for the care and maintenance of the church fabric etc. had not been transferred to the parochial church council: see PARA 576 ante.

9 *Steeven and Hollah v Rector etc of St Martin Orgars* (1824) 2 Add 255; *Campbell v Parishioners and Inhabitants of Paddington* (1852) 2 Rob Eccl 558; *Hansard v Parishioners of St Matthew, Bethnal Green* (1878) 4 PD 46; *Dewdney v Ford* (1861) 7 Jur NS 637 at 638; *Sieveking and Evans v Kingsford* (1866) 36 LJ Eccl 1. Where anything has been added or altered without a faculty it cannot legally be removed or restored without a faculty: *Walker v Clyde* (1861) 10 CBNS 381; *Ritchings v Cordingley* (1868) LR 3 A & E 113 at 122; *Vincent v Eyton* [1897] P 1 at 12; *R v North, ex parte Oakey* [1927] 1 KB 491, CA. See PARAS 1311, 1318 post.

10 See PARA 1331 et seq post.

11 *Parham v Templar* (1821) 3 Phillim 515 at 527, per Sir John Nicholl.

12 *Rector and Churchwardens of St Stephen, Walbrook and Grocers Co v Sun Fire Office Trustees* (1883) Trist 103 at 108.

13 In many dioceses directions have been issued as to the material, style and dimensions of monuments, with an intimation from the chancellor that he will not require a faculty to be sought provided the proposed monument complies with those requirements. See PARA 1316 post.

14 This practice has been frequently resorted to in recent years in order to facilitate the experimental rearrangement of church furnishings to meet new liturgical needs. In such cases it has been usual for the chancellor to give an informal temporary licence by letter on condition that (1) if after a limited specified period the parish wished to abandon the experiment the status quo would be restored; and (2) if the experiment proved to be a success application would be made for a faculty confirming the rearrangement. It is implied that no irreversible alteration may be made without a faculty.

15 *Woollocombe v Ouldrige* (1825) 3 Add 1 at 5; *Butt v Jones* (1829) 2 Hag Ecc 417 at 424, per Sir John Nicholl; *Serjeant v Dale* (1875) Trist 33 at 37, per Dr Tristram; *Egerton v All of Odd Rode* [1894] P 15; *Vicar of St James, Norland v Parishioners of St James, Norland* [1894] P 256 at 257, 258; *St Jude's, Hampstead* (1909) Times, 6th August; *Dupuis v Parishioners of Ogbourne St George* [1941] P 119. As to persons interested, see PARA 1319 post.

16 See PARA 523 ante, 1321 post.

17 See PARA 1321 post.

18 See PARA 960 et seq ante, 1318 post.

19 See PARA 1317 post; see also CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

20 See PARA 1073 ante.

21 Revised Canons Ecclesiastical, Canon F13 para 4.

UPDATE

1310 Principles and practice of the faculty jurisdiction

TEXT AND NOTES--All faculty matters must, except as provided otherwise (see PARA 1331A), be dealt with by the chancellor: Faculty Jurisdiction Rules 2000, SI 2000/2047, r 12(1). Any faculty granted by the chancellor in unopposed proceedings must (subject to r 36: see PARA 1330) be issued by the registrar in App C Form 5 together with a certificate in App C Form 6 to be completed in accordance with the requirement in the faculty: r 12(2).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--In considering the effect on a parish of granting a faculty, the court cannot take into account the subjective reasons of parties opposing it: *Re St Peter and St Paul, Upper Teddington and St Michael and St George, Fulwell* [1993] 1 WLR 852.

NOTE 15--The court should be reluctant to grant faculties to the detriment of private property, and should do so only when compelled by necessity or duty: *Re St Peter and St Paul, Upper Teddington and St Michael and St George, Fulwell*. See also *Re St Luke the Evangelist, Maidstone* [1995] 1 All ER 321 (faculty sought for reorientation of liturgical worship and replacement of pews with chairs in listed building church but granted only in respect of latter). Necessity and necessary means 'something less than essential, but more than merely desirable or convenient; in other words, something that is requisite or reasonably necessary': *Re St John the Evangelist, Blackheath* (1998) 5 ELJ 217. When considering whether to grant a faculty, the court should consider requirements under the Disability Discrimination Act 1995, which will have future application to churches: *Re Holy Cross, Pershore* [2001] 3 WLR 1521. See also *Re All Saints, Hough on the Hill* (2002) Times, 31 January (effect on bats).

TEXT AND NOTE 16--The chancellor must now seek the advice of the advisory committee before making a final determination in any cause of faculty, unless the action proposed relates exclusively to exhumation or the reservation of a grave space or he is satisfied that the matter is sufficiently urgent to justify the grant of a faculty without obtaining the committee's advice: see the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 15(1) and SI 2000/2047 r 14. Where the advisory committee supplied a certificate in the prescribed form under r 3(5) (see PARA 1323) in respect of the same works or purposes as are the subject of the petition not more than 12 months prior to the lodging of the petition the advisory committee may, if appropriate, confirm that they do not wish to alter the certificate: r 14.

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1311. The legal effect of a faculty.

A faculty, as its name indicates, confers liberty on a person to do something; it does not command him to do anything¹. If it has been obtained surreptitiously or fraudulently it may be revoked², but in general it is irrevocable, even though granted in error³, unless the court has reserved to itself power in that behalf⁴. A faculty may be granted 'until further order'; the insertion of these words enables the court to retain control of the subject matter of the faculty and to recall the faculty if, for instance, there is a change in the relevant circumstances, or a condition attached to the faculty has not been observed⁵, or the subject matter of the faculty becomes an object of unlawful ceremonial use or of superstitious use or reverence⁶.

A faculty may be granted in appropriate cases for the purpose of regularising a situation resulting from omission to obtain a faculty. In such a case what was wrongfully done cannot be undone without a faculty; so that, for example, a faculty will be required for the removal of an article unlawfully introduced⁷. Alternatively, an act done without a faculty may be legalised by the grant of a confirmatory faculty⁸, and sometimes an article which has been introduced without a faculty becomes the subject of crosspetitions for its removal or confirmation.

1 *Re St Mary, Tyne Dock (No. 2)* [1958] P 156 at 165, [1958] 1 All ER 1 at 6.

2 *Butt v Jones* (1829) 2 Hag Ecc 417.

3 *LCC v Dundas* [1904] P 1.

4 *Rector of St Anne's Limehouse v Parishioners of St Anne's Limehouse* [1901] P 73. A new faculty may, however, be granted, in effect reversing the former one: *Churchwardens of St John's, Margate v Parishioners etc of St John's, Margate* (1794) 1 Hag Con 198.

5 The court has power to grant a faculty subject to conditions (*St Jude's, Hampstead* (1909) Times, 6th August), one of which may be that the work is to be carried out under the supervision of the archdeacon or some other person nominated by the court: see PARA 1327 post.

6 *Re St Mary, Tyne Dock (No. 2)* [1958] P 156 at 166, [1958] 1 All ER 1 at 7.

7 For examples of faculties for such purposes, see *Vincent v Eyton* [1897] P 1; *Churchwardens of St John's, Margate v Parishioners etc of St John's, Margate* (1794) 1 Hag Con 198; *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80; *Pearson v Stead* [1903] P 66; *Gardner v Ellis* (1874) LR 4 A & E 265. See also PARA 1310 note 9 ante, 1318 post.

8 *Sieveking and Evans v Kingsford* (1866) 36 LJ Eccl 1; *Gardner v Ellis* (1874) LR 4 A & E 265; *Bradford v Fry* (1878) 4 PD 93; *Re Woldingham Churchyard* [1957] 2 All ER 323, [1957] 1 WLR 811.

UPDATE

1311 The legal effect of a faculty

TEXT AND NOTES--As to the issue of injunctions and the making of restoration orders, see PARA 1311A.

TEXT AND NOTES 7, 8--A confirmatory faculty is not retrospective: *Re St Agnes's, Toxteth Park* [1985] 1 WLR 641; *Re St Mary's, Barton-upon-Humber* [1987] Fam 41, [1987] 2 All ER 861 (unauthorised sale of church items). As to the discussion and reporting of

defaults in relation to faculties, see Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 20 and PARA 580.

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1311A. Injunctions and restoration orders.

1. Applications

Where it appears to the consistory court that a person intends to commit or continue to commit, or cause or permit the continuance of, any act in relation to a church or churchyard or any article appertaining to a church which would be unlawful under ecclesiastical law, it may issue an injunction restraining that person from doing so¹. Where it appears to the consistory court that a person has committed, or caused or permitted the commission of, any such act, it may make a restoration order requiring that person to take such steps as the court may consider necessary, within such time as the court may specify, to restore the position so far as possible to that which existed immediately before the act was committed². An injunction may be issued and a restoration order may be made on an application by the archdeacon or any other person appearing to the court to have a sufficient interest in the matter or on its own motion³.

The chancellor must seek the advice of the diocesan advisory committee before issuing a permanent injunction or making a restoration order, unless the action proposed relates exclusively to exhumation or the reservation of a grave space or he is satisfied that the matter is sufficiently urgent to justify the issue of an injunction without obtaining the committee's advice⁴. Failure to comply without reasonable excuse with any requirement of an injunction issued or a restoration order made by any court is a contempt of the court⁵.

1 Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13(4). Section 13 is wide enough to apply to the consecrated parts of a municipal cemetery: *Re West Norwood Cemetery* [1994] 3 WLR 820. Cf. *Re Welford Road Cemetery, Leicester* [2006] All ER (D) 244 (Oct)

2 1991 Measure s 13(5). The court must not make a restoration order in respect of any act unless it is satisfied that less than six years have elapsed since the act was committed: s 13(8). Where an application for a restoration order is made by an archdeacon and any fact relevant to the making of the application has been deliberately concealed from him, the period of six years does not begin to run until the archdeacon has discovered the concealment or could with reasonable diligence have done so: s 13(9). Deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach: s 13(10).

3 Ibid s 13(6).

4 Ibid s 15(1).

5 Ibid s 13(11).

2. Procedure

An application for an injunction or for a restoration order may be made by the archdeacon concerned or by any other person appearing to the registrar or the chancellor to have a sufficient interest in the matter¹. The application must be made in writing in the prescribed form² and must be accompanied by an affidavit of the applicant, or of a person acting on his behalf, giving details of the facts and matters relied on in support of his application³. An affidavit may contain statements of information or belief with the sources and grounds thereof⁴. An application must not be served on any person unless it contains details of a date of hearing, which must be provided by the registrar who issues the application⁵.

The application must be served (1) on any person against whom the applicant is seeking an injunction or restoration order; and (2) where faculty proceedings have been instituted in relation to or concerning the subject matter of the application, on each of the petitioners and any other parties to the proceedings; and (3) if it appears to the court impracticable to serve the application on all or any of the persons in (1) and (2) above, the court may make an order giving leave for steps to be taken to bring the application to the notice of any person to be served⁶. Unless the court otherwise directs, service must be effected not less than two clear days before the hearing date⁷. A copy of any application (other than by the archdeacon) must be sent by the applicant to the archdeacon and also to the minister (if he is not the applicant) at the same time as steps are taken to effect service⁸. Before he lays an application before the chancellor, the registrar must satisfy himself that service has been effected and must require by way of proof either an acknowledgement of service signed by the person against whom an injunction or restoration order is sought, or his solicitor, or an affidavit that personal service or service in accordance with any order of the court has been effected⁹.

Any person on whom an application is served is entitled to answer the application by way of affidavit evidence from himself and witnesses on his behalf or, subject to the directions of the chancellor, by oral evidence at the hearing¹⁰. Any affidavit in answer to an application must be served on the applicant within 14 days after service of the application on the person answering, and a copy of the affidavit must at the same time be sent to the registrar¹¹.

The evidence at the hearing of an application must be given by affidavit (unless leave is given by the chancellor for evidence to be given orally) provided that the makers of affidavits may be required to attend the hearing for cross-examination¹². The chancellor may issue an injunction or make a restoration order on such terms as appear to him to be just and such terms must be set out in an order in the prescribed form¹³. Any order requiring any person to do an act must state the time within which an act is to be done¹⁴. The chancellor must give such directions as to service of the order as he considers appropriate¹⁵. On the hearing of an application the chancellor must give such directions in relation to the institution of faculty proceedings as he considers appropriate¹⁶.

Where an applicant considers it necessary to apply to the chancellor for an injunction without complying with the requirements for service, he may so inform the registrar, who must immediately refer the matter to the chancellor, who may issue an injunction on such terms as may appear to him to be just by way of an order in the prescribed form¹⁷ provided that he (1) requires the applicant immediately to serve an application in the prescribed form¹⁸ on the person against whom the injunction is issued, (2) orders that the injunction continues in force for a specified period of time which, unless he otherwise directs, must be not more than 14 days from the date of the order, and (3) gives directions for the hearing of the application¹⁹. Where as a result of information brought to his attention (whether before or after faculty proceedings have been instituted) the chancellor considers it necessary to issue an injunction against any person without any application having been made, he may of his own motion issue an injunction on such terms as appear to him to be just by way of an order in the prescribed form²⁰ provided that he makes an order that the injunction continues in force for a specified period of time which, unless he otherwise directs, must be not more than 14 days from the date of the order²¹.

Where no application has been made, but it appears to the chancellor as the result of information brought to his attention (whether before or after faculty proceedings have been instituted) that there are grounds on which he might make a restoration order, he cannot make such an order of his own motion by way of an order in the prescribed form²² without first considering the desirability of (1) directing that a special citation be served on any person against whom such a restoration order might be made requiring the attendance of such person before the court and place specified in the citation, and (2) giving that person an opportunity to be heard as to whether or not a restoration order should be made²³.

Any injunction or restoration order may be varied, extended or discharged by the chancellor as he thinks fit²⁴. At any stage of any proceedings, the chancellor must give such directions as appear to him to be necessary to enable the proceedings to be expeditiously and justly determined, and he may adjourn the hearing of any application or other proceedings from time to time on such terms as he considers just²⁵. The chancellor may make such orders for costs in respect of any application for an injunction or restoration order as he considers just²⁶.

1 Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992, SI 1992/2884, r 3.

2 *Ibid* Appendix Form 1.

3 *Ibid* r 4(1), (2). This provision is subject to *ibid* r 8(1).

4 *Ibid* r 4(2).

5 *Ibid* r 4(3).

6 *Ibid* r 5(1)(a). This provision is subject to *ibid* r 8. Service of any document may be effected in the manner provided for in what is now the Faculty Jurisdiction Rules 2000, SI 2000/2047, r 31 (see *PARA* 1329) and the provisions of what is now rr 32, 36 apply for these purposes: SI 1992/2884 r 10(1) (which refers to the predecessors of those provisions contained in the Faculty Jurisdiction Rules 1992, SI 1992/2882, (now revoked)).

7 SI 1992/2884 r 5(1)(b).

8 *Ibid* r 5(2).

9 *Ibid* r 5(3).

10 *Ibid* r 6(1).

11 *Ibid* r 6(2).

12 *Ibid* r 7(1).

13 *Ibid* r 7(2)(a). For the prescribed form, see *ibid* Appendix Forms 2 or 3. The form must contain a notice stating that failure to comply without reasonable excuse with any requirement of the injunction or order is a contempt of court: *ibid* r 7(2)(a).

14 *Ibid* r 7(2)(b).

15 *Ibid* r 7(2)(c).

16 *Ibid* r 7(3).

17 *Ibid* Appendix Form 4.

18 *Ibid* Appendix Form 1.

19 *Ibid* r 8(1).

20 *Ibid* Appendix Form 5.

21 *Ibid* r 8(2).

22 *Ibid* Appendix Form 5.

23 *Ibid* r 9.

24 *Ibid* r 10(2).

25 *Ibid* r 10(3).

26 *Ibid* r 11.

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(ii) Matters within the Faculty Jurisdiction

1312. Faculties relating to church buildings.

Any works affecting the fabric or fixtures of a church will generally require a faculty or, where appropriate¹, an archdeacon's certificate². This requirement will normally apply to any structural addition, alteration, demolition, renovation or repair, although in practice an exception is made in the case of minor current repairs³. It will apply also to works of decoration or redecoration, to the installation or alteration of lighting or heating systems, to the moving of, for example, a pulpit, font, organ⁴, stalls or pews to new positions⁵, and to the erection of monuments, including memorial tablets on the walls⁶.

If planning permission under the general law is required in respect of additions or alterations to a church building the necessity for obtaining a faculty from the ecclesiastical court will not be affected⁷.

If a faculty is sought for works designed to convert a church into a dual-purpose building (for example by providing accommodation for social activities in addition to worship) it may be considered necessary to impose conditions to ensure that the new uses will not be inconsistent with the character of a consecrated building⁸.

There is no legal impediment to the granting of a faculty for the interment of cremated remains under the floor of a church⁹, but in practice such faculties are sparingly granted and usually, it is thought, only in cases where the deceased person was a priest, and in particular where he had been the incumbent of the parish concerned¹⁰.

At one time faculties were granted for the appropriation of pews, but it would require very special circumstances today to induce such a grant¹¹.

1 For the cases in which the archdeacon's certificate procedure is available, see PARA 1331 post.

2 See PARA 1306 ante, 1310 text to note 9 ante.

3 See PARA 1310 ante.

4 The repair or renovation of an organ is usually considered to require a faculty unless it amounts to no more than routine maintenance.

5 As to alterations affecting movable furnishings and other articles, see PARA 1318 post.

6 See the memorandum of Sir Alfred Kempe cited in PARA 1306 note 8 ante. As to monuments, including mural tablets, and inscriptions on them, see PARA 1316 post.

7 Such cases would usually arise where the proposed additions or alterations were likely to affect a church's external appearance. The requirement of planning permission for development must be distinguished from certain other requirements (eg listed building consent) in respect of which there is an exemption in favour of ecclesiastical buildings for the time being used for ecclesiastical purposes: see TOWN AND COUNTRY PLANNING.

8 As to the use of consecrated ground for secular purposes, see PARA 1073 ante, 1315 post.

9 See *Re Kerr* [1894] P 284. See also *The Disposal of Cremated Remains* (CIO 1965) 7, 8. The incumbent's consent is always required. It seems that in current practice a faculty for disposal in the wall (immurement) is seldom if ever granted. One or two instances are known in which permission has been granted for caskets or urns containing cremated remains to be placed in positions in which they are openly visible in the church, but

such cases are to be regarded as wholly exceptional. As to the interment of cremated remains in churchyards, see PARA 1315 post.

10 The courts appear to act on a principle similar to that which was applied to the burial of a body by a mediaeval canon which was entitled 'De non sepeliendo in ecclesiis', under the terms of which the privilege was to be reserved for a priest or some holy man who by the merits of his past life might deserve such a peculiar favour: Phillimore, *Ecclesiastical Law* (2nd Edn) 651. As to the history of the practice of burying in churches, see Kennett, *Parochial Antiquities* 591, 592; *Gilbert v Buzzard* (1821) 2 Hag Con 333; *Rich v Bushnell* (1827) 4 Hag Ecc 164 at 171. A faculty was required, unless the right to such burial was prescribed for as belonging to a messuage: *Waring v Griffiths* (1758) 1 Burr 440; *Harvey v Percivall* (1909) Co Ent fo. 8, cited in *Dawney v Dee* (1620) Cro Jac 605; and see 1 Gib Cod 453. The burial of a body in church is now in many instances prohibited by law (see CREMATION AND BURIAL vol 10 (Reissue) PARA 1013), but even where no such prohibition is in force the granting of a faculty for this purpose would seem today to be justifiable, if at all, only on quite exceptional grounds. As to vaults in churches and petitions for exclusive rights of burial in them, see *Rugg v Kingsmill* (1868) LR 2 PC 59; *Kellett v St John's, Burscough Bridge* (1916) 32 TLR 571.

11 *Fuller v Lane* (1825) 2 Add 419; *Woollocombe v Ouldrige* (1825) 3 Add 1; *Vicar and Churchwardens of West Peckham v Geary* (1889) Trist 189 at 207. For an instance of special circumstances, see *Earl of Bathurst v Cirencester Parish* [1921] P 381 (special rights enjoyed for over 200 years); and cf. *Re Mosley's Settled Estates* (1912) 56 Sol Jo 325. See also PARAS 555, 1089 ante, and Opinions of the Legal Board (5th Edn 1973) III/46.

UPDATE

1312 Faculties relating to church buildings

TEXT AND NOTE 3--See *Re All Saints', Melbourn* [1990] 1 WLR 833 (strong presumption against granting a faculty authorising adverse change to a listed building; clear necessity for the change must be shown), applied in *Re St Barnabas, Dulwich* [1994] 2 WLR 545; *Re St James, Shirley* [1994] 3 WLR 52.

NOTE 4--See *Re St Mary's, Balham* [1978] 1 All ER 993; *Re St Mary's, Lancaster* [1980] 1 WLR 657 (petition for replacement of pipe organ; in future reports of expert witnesses to be disclosed before hearing in accordance with RSC Ord 38); *Re St Martin's, Ashton-upon-Mersey* [1981] 1 WLR 1288 (faculty to introduce computer organ refused where existing pipe organ capable of restoration); *Re St Barnabas, Kensington* [1990] 1 All ER 169 (provision of additional font for adult baptism by immersion).

NOTE 5--See also *Re St Luke the Evangelist, Maidstone* [1995] 1 All ER 321 (faculty granted for replacement of pews with chairs in listed building church); and *Re Holy Cross, Pershore* [2001] 3 WLR 1521.

NOTE 6--See also *Re St Mary, Longstock* [2006] 1 WLR 259 (faculty granted for stained glass window in memory of parishioner).

NOTE 7--A consistory court hearing an application for works affecting the exterior of a church, for which works a planning authority has already granted permission, is entitled to assume, unless there is convincing evidence to the contrary, that the authority has made the right decision: *Re St Laurence, Alvechurch* (2003) Times, 4 September.

NOTE 8--For guidelines for the adaptation of existing church buildings see *Re Holy Innocents, Fallowfield* [1982] Fam 135.

NOTE 9--See *Re St Peter's, Folkestone* [1982] 1 WLR 1283 (petition for interment of ashes within church).

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1313. Faculties for vesting privately-owned parts of churches.

In proceedings taken by an incumbent¹ or parochial church council a court may grant a faculty vesting any building or other structure forming part of and physically connected with a church² in the person or body in whom the church is vested³ where the incumbent or council satisfies the court that:

- 32 (1) the person in whom the church is vested is not the owner entitled to possession of the building or that there is reasonable doubt as to the ownership or right to possession of it⁴; and
- 33 (2) the incumbent or council or some other person has taken all reasonable steps since, or shortly before, the commencement of the proceedings to communicate with all persons who may reasonably be supposed to have any rights of ownership or possession, whether absolute or limited, over the building⁵; and
- 34 (3) notwithstanding such reasonable steps there has been no communication with those persons; or all persons with whom communication has been made and who, on reasonable grounds, claim rights of ownership or possession over the building consent to the grant of the faculty⁶; and
- 35 (4) no works of repair, redecoration or reconstruction have been executed upon the building by or on behalf of any person claiming any title to it adverse to the title of the person in whom the church is vested during the seven years immediately preceding the commencement of the proceedings⁷.

Where such a faculty is granted the building specified in it vests, by virtue of the faculty and without any further or other assurance or conveyance, in the person in whom the church is vested as part of the church for all purposes, and thereupon any property rights of any other person in it determine⁸.

1 'Incumbent' means the incumbent of the benefice comprising the parish in which the church concerned is situated: Faculty Jurisdiction Measure 1964, s 1 (1). For the meaning of 'benefice', see the Interpretation Measure 1925, s 3, and PARA 768 note 1 ante.

2 Faculty Jurisdiction Measure 1964, s 1 (1). For the meaning of 'church', see PARA 302 note 2 ante.

3 Ibid s 1 (2).

4 Ibid s 1 (2) (i).

5 Ibid s 1 (2) (ii). The court may appoint a solicitor to represent all persons other than those represented known or unknown, who may have rights of ownership or possession over the building: s 1 (3). Unless otherwise ordered by the court the solicitor's proper costs in the proceedings must be paid by the persons bringing the proceedings: s 1 (3).

6 Ibid s 1 (2) (iii).

7 Ibid s 1 (2) (iv).

8 Ibid s 1 (4).

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1314. Faculties for demolition of churches.

The power of an ecclesiastical court to grant a faculty for the demolition or partial demolition of a church¹, formerly very extensive², is now restricted by provisions specifying the grounds upon which such a faculty may be granted and the procedural requirements which must be fulfilled before the faculty can be granted³.

A court may grant a faculty:

- 36 (1) for the demolition of the whole or part of a church if it is satisfied that another church will be erected on the same site or curtilage, or part of it, to take the place of the existing church⁴;
- 37 (2) for the demolition of part of a church if it is satisfied that the part left standing will be used for the public worship of the Church of England for a substantial period after the demolition⁵;
- 38 (3) for the demolition of part of a church if it is satisfied that the demolition is necessary for the purpose of the repair, alteration or reconstruction of the part to be demolished or of the whole of the church⁶;
- 39 (4) for the demolition or partial demolition of a church if, under specified statutory provisions, an order⁷ has been made in respect of that church by a court of competent jurisdiction or a notice⁸ has been served in respect of it by the appropriate local authority respecting works to be carried out in the public interest⁹.

A petition for the grant of a faculty under these provisions must state which of the grounds are relied on and must give information on various specified matters, including arrangements for the disposal of the fittings and contents of the church¹⁰.

Other statutory provisions enabling the demolition of a church to be authorised by a procedure independent of the faculty jurisdiction have been dealt with elsewhere¹¹.

1 For the meaning of 'church', see PARA 302 note 2 ante.

2 See *Re Parish Church of St George, Birmingham* [1960] 3 All ER 185, [1960] 1 WLR 1069; *Re St Edburga's, Abberton* [1962] P 10, [1961] 2 All ER 429.

3 See the Faculty Jurisdiction Measure 1964, s 2, which prohibits the granting of such faculties except on the grounds there specified (see infra) and after fulfilment of such procedural requirements as are applicable (see PARAS 1321, 1323 post). Nothing in s 2 is to be construed as prejudicing or affecting the provisions of the Ancient Monuments Acts 1913 to 1972 or the Town and Country Planning Act 1971: Faculty Jurisdiction Measure 1964, s 2 (5); Interpretation Act 1889, s 38; Interpretation Measure 1925, s 1.

4 Faculty Jurisdiction Measure 1964, s 2 (2). As to the procedural requirements, see s 2 (1), and PARAS 1321, 1323 post.

5 Ibid s 2 (3) (i). As to the procedural requirements, see s 2 (1), and PARAS 1321, 1323 post.

6 Ibid s 2 (3) (ii). In this case the procedural requirements are less elaborate: see s 2 (3) proviso, and PARAS 1321, 1323 post.

7 I.e. an order under the Public Health Act 1936, s 58 (1) (a); Public Health Act 1961, s 24 (1), requiring the execution of works to obviate danger from the condition of the church: Faculty Jurisdiction Measure 1964, s 2 (4) (i).

8 le (a) a notice requiring the taking down, repair or securing of a church given under the London Building Act (Amendment) Act 1939, s 62 (2), or under any other local Act empowering the local authority to give such a notice on the ground that a building or structure is dangerous; (b) a notice that the local authority proposes to take immediate action to deal with the church as a dangerous building under the Public Health Act 1961, s 25 (2); (c) a notice requiring the execution of works of repair or restoration to the church under s 27 (1) (a): Faculty Jurisdiction Measure 1964, s 2 (4) (ii)-(iv).

9 Ibid s 2 (4).

10 See the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 4 (2), and PARA 1322 note 2 post.

11 See PARA 1120 et seq ante.

UPDATE

1314 Faculties for demolition of churches

TEXT AND NOTES--1964 Measure s 2 replaced: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 ss 17, 18, Sch 8.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-6--1964 Measure s 2(2), (3) now 1991 Measure s 17(2), (3). 1964 Measure s 2(3) proviso s 2(5) not reproduced.

TEXT AND NOTES 7-9--1964 Measure s 2(4) not reproduced. The court cannot grant a faculty for demolition of a church where another church is to be erected on the site, or for demolition of part of a church where the part left standing will continue to be used for worship, if the church is a listed building or in a conservation area unless (i) the registrar has given notice in writing to the Secretary of State, the local planning authority, the Historic Buildings and Monuments Commission for England, and the national amenity societies; (ii) the judge of the court has considered the advice tendered by the bodies in (i) above; (iii) the registrar has given notice in writing to the Royal Commission on the Historical Monuments of England and either (a) for one month or more following the giving of the notice reasonable access to the church has been made available to the Royal Commission for the purpose of recording it, or (ii) the Royal Commission have stated in writing that they have completed their recording of the church or that they do not wish to record it: 1991 Measure s 17(5). The court cannot grant a faculty for demolition of part of a church for the purpose of repair, alteration or reconstruction unless (i) it is satisfied, after consultation with the advisory committee, that when the proposed repair, alteration or reconstruction is completed the demolition will not materially affect the external or internal appearance of the church or the architectural, archaeological, artistic or historic character of the church, or (ii) the procedural requirements and, where applicable, the requirements as to churches that are listed buildings or in conservation areas, have been complied with: s 17(6).

Where the chancellor of a diocese is satisfied (i) that the demolition of the whole or part of a church is necessary in the interests of safety or health or for the preservation of the church and, having regard to the urgency of the matter, there is insufficient time to obtain a faculty in respect of it, and (ii) in the case of a church which is a listed building or is in a conservation area, that it is not practicable to secure safety or health or the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works to be carried out are limited to the minimum measures reasonably necessary, he may by an instrument under his hand authorise the carrying out of the demolition without a faculty: s 18(1). This power is without

prejudice to the powers exercisable under any rule of law by diocesan chancellors: s 18(1). An instrument (i) may require the person to whom it is issued (subject to his obtaining the necessary faculty) to carry out specified works for the restoration of the church following its demolition or partial demolition, and (ii) in the case of partial demolition of a church which is a listed building or is in a conservation area, must require the person to whom it is issued, as soon as practicable after the works have been carried out, to give the local planning authority written notice describing the works carried out: s 18(2). The chancellor must send a copy of the instrument to the Council for the Care of Churches and the local planning authority: s 18(3).

'Church' includes any building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to faculty jurisdiction: s 19.

Any notice under the above provisions may be given to any person by delivering it to him, or by leaving it at his proper address, or by post: s 30(1). The proper address of such a person is his last known address: s 30(2).

On a petition for a faculty for demolition under s 17, the court must have regard to the pastoral needs and mission of the church: *Re St Barnabas, Dulwich* [1994] 2 WLR 545. See also *Re Christchurch, Sparkbrook* (2005) Times, 19 December.

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1315. Faculties relating to churchyards.

The faculty jurisdiction extends not only to consecrated churchyards but also to unconsecrated curtilages¹ and to consecrated burial grounds not belonging to a church². In general a faculty is required for any alteration affecting such land, but certain exceptions are recognised. In particular, where a right of burial in a consecrated churchyard exists or the privilege of such burial has been lawfully granted³ the burial may be carried out without a faculty; and in practice there is today no differentiation for this purpose between the burial of a body and the interment of cremated remains⁴. Where, however, it is desired to bury cremated remains in a churchyard closed by Order in Council⁵, authorisation by faculty is required, although for this purpose a general faculty is regarded as sufficient⁶. A right of burial in the churchyard does not imply any right to be buried in a particular position or any right to the exclusive property in a grave; these are privileges which can be obtained only by the grant of a faculty⁷.

A court may issue a faculty granting, enlarging or continuing any right to the exclusive use of any particular part of a churchyard, burial ground or other consecrated land for the purpose of sepulture⁸, but not for any period longer than 100 years from the date of the faculty⁹; and, subject to the terms of any faculty issued after 14th April 1964, any such right, whether absolute or limited and however granted or acquired, ceases 100 years after that date¹⁰.

Burial does not confer a right to place a tombstone or other monument in a churchyard; yard; the matter is within the court's jurisdiction, and the necessary authorisation must be obtained in every case¹¹.

In practice faculties are not required alterations of minor importance¹² or for works of routine maintenance in the churchyard¹³ or, generally speaking, for alterations in a consecrated burial ground not belonging to a church¹⁴. Any substantial alteration in the design or layout of a churchyard must, however, be authorised by faculty¹⁵. This applies, for example, to schemes involving the large-scale levelling of grave mounds and the removal or re-siting of gravestones with a view to easier maintenance¹⁶; it would also apply, in many cases at any rate, to the making of new paths and the removal or diversion of existing ones. If it is desired to set aside a portion of the churchyard exclusively for the interment or deposit of cremated remains application must be made for a faculty.

Except where there is express statutory provision to the contrary¹⁷ a faculty is always required for the exhumation of human remains from consecrated ground¹⁸. The Home Secretary's licence is also required, save where the exhumation is for the purpose of removal from one consecrated burial place to another¹⁹. Numerous grounds, apart from re-interment in a different grave, have been held to justify the grant of a faculty²⁰.

A faculty is required for the erection of any building or other structure (for example an oil storage tank) in a churchyard. Subject to certain statutory restrictions in the case of a disused burial ground²¹ the court may grant such faculties both for ecclesiastical purposes (for example for a church hall) and also, within certain limits, for other purposes which are not inconsistent with the character of consecrated land²². Similar considerations apply to the authorisation by faculty of other forms of user, and in particular to the granting of rights in the nature of easements²³. While faculties are equally necessary for such purposes in the case of unconsecrated curtilages, the courts are disposed to exercise greater latitude in granting them²⁴.

1 References in this paragraph to churchyards are, unless otherwise to be understood as including references to consecrated burial grounds belonging to a church (whether or not they are immediately adjacent to it) and also to unconsecrated curtilages, as to which see PARA 1308 ante.

2 See PARA 1309 ante.

3 Parishioners and persons who die in the parish have (through their personal representatives) the right to such burial if there is room in the churchyard and burials there have not been stopped through closure by Order in Council: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1059. In respect of other persons special permission for burial may be granted by the incumbent with the assent of the parochial church council or at least of the churchwardens: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1061.

4 While the legal right strictly relates to the burial of a body and not of cremated remains, this distinction seems now to be of little practical importance in view of the Revised Canons Ecclesiastical, Canon B 38, which provides that, save for good and sufficient reason, the ashes of a cremated body should be interred or deposited in consecrated in consecrated ground (Canon B 38 para 4 b), and imposes on ministers an obligation not to refuse burial expressed in terms which apply equally to a corpse and to ashes (Canon B 38 para 2): see PARAS 1041, 1043 ante.

5 While the effect of a closing order is to prohibit, subject to possible exceptions, the further burial of bodies (see CREMATION AND BURIAL vol 10 (Reissue) PARA 1134), the burial of cremated remains may properly continue (see Opinions of the Legal Board (5th Edn 1973) III/9).

6 Cf. Opinions of the Legal Board (5th Edn 1973) III/30. See also the Parochial Fees Order 1972, S.I. 1972 No. 177, Schedule, Part II para 1, where a distinction is made for this purpose between a general faculty and a particular faculty.

7 The selection of the position of a grave is normally within the incumbent's discretion, but if a particular space is to be reserved in advance a faculty is required: see Opinions of the Legal Board (5th Edn 1973) III/9; Parochial Fees Order 1972, Schedule, Part II para 6. Subject to any existing rights and to any statutory restrictions which may be applicable there is no legal impediment to the re-use of old grave sites for fresh burials after a suitable period of time has elapsed; for this purpose no faculty is required except where the removal of gravestones is involved.

8 Faculty Jurisdiction Measure 1964, s 8 (1).

9 Ibid s 8 (1) proviso.

10 Ibid s 8 (1). This provision does not apply to burial grounds and cemeteries provided under the Burial Acts 1852 to 1906 (largely repealed), the Public Health (Interments) Act 1879 (repealed) or the Local Government Act 1972, s 214: Faculty Jurisdiction Measure 1964, s 8 (2); Local Government Act 1972, s 272 (2).

11 As to monuments and inscriptions on them, see PARA 1316 post.

12 See PARA 1310 ante.

13 However, a faculty would usually be necessary for the construction, demolition or substantial alteration of a wall or fence. The felling of trees normally requires the consent of the diocesan parsonages board (see the Repair of Benefice Buildings Measure 1972, s 20 (1), and PARA 1180 ante) but not, it seems, a faculty.

14 See PARA 1309 ante.

15 See Opinions of the Legal Board (5th Edn 1973) III/30.

16 In authorising such schemes consistory courts frequently impose conditions relating to such matters as the disposal of gravestones, the recording of inscriptions etc.: see also PARA 1317 post. Whilst a grave may not be disturbed, it appears that no faculty is required to level a grave mound, laying down the same turf after doing so: see *Bennett v Bonaker* (1828) 2 Hag Ecc 25; *Bennett v Bonaker* (1830) 3 Hag Ecc 17 at 51, 52.

17 Eg under the New Towns Act 1965, s 20 (6), or the Town and Country Planning Act 1971, s 128 (6), or under the Pastoral Measure 1968, s 30 (see PARA 1074 ante), s 61 (see PARA 1076 ante), or s 65, Sch. 6.

18 *Adlam v Colthurst* (1867) LR 2 A & E 30; *Norfolk County Council v Knights and Caister-on-Sea Joint Burial Committee* (1958) 1 All ER 394n, [1958] 1 WLR 309, where a faculty for disinterment to permit road widening was refused; see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125, and see PARA 1075 ante.

19 Burial Act 1857, s 25: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1123. The consistory court may grant a faculty subject to the Home Secretary's licence being obtained, but is not obliged to do so: *Re Talbot* [1901] P 1 at 6.

20 Eg the identification of a body (*R v Tristram* [1898] 2 QB 371), or the cremation of a body previously buried (*Re Matheson* [1958] 1 All ER 202, [1958] 1 WLR 246).

21 See PARA 1317 post.

22 See PARA 1073 ante. Among the factors to be considered by the courts in such cases is the interest of parishioners in the availability of space for future burials: see Opinions of the Legal Board (5th Edn 1973) III/46.

23 Thus faculties are frequently granted, usually on the application of public authorities, for placing cables etc. under or over a churchyard or for 'throwing into the highway' a strip of land for road-widening purposes. Apart from such purposes there is no jurisdiction to grant a faculty for the secular use of consecrated land unless the original purpose of consecration can no longer be carried out: *Re St John's, Chelsea* [1962] 2 All ER 850, [1962] 1 WLR 706; see PARA 1073 ante. Faculties have been granted for the construction and use of a private pathway across a churchyard (*Rector etc of St Gabriel, Fenchurch Street v City of London Real Property Co Ltd* [1896] P 95), for an easement of light and air over consecrated ground (*Rector and Churchwardens of St Stephen, Walbrook and Grocers Co v Sun Fire Office Trustees* (1883) Trist 103; *St Martin Orgars* (1890) Trist 145), and for interference with the ancient lights of a consecrated building (*St Mark's, Old Street* (1909) Times, 6th August; *Christ Church, Newgate Street* (1909) Times, 27th November).

24 See PARA 1308 note 4 ante.

UPDATE

1315 Faculties relating to churchyards

TEXT AND NOTES--Use of consecrated ground for any purpose requires the sanction of the court, which will be granted only if there is some substantial reason for doing so: *Re Coleford Cemetery* [1984] 1 WLR 1369. The consistory or commissary court has jurisdiction to deal with all matters arising incidentally in a cause of faculty, including a diversion order in respect of money received as consideration for the grant of a licence executed under the authority of a faculty: *Re consecrated land in Camomile Street* [1990] 3 All ER 229, applying *Re St John's, Chelsea* (cited in NOTE 23).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 6, 7--1972 Order revoked: for current fees see PARA 1198.

TEXT AND NOTE 7--See *Re West Pennard Churchyard* [1991] 4 All ER 124 (parishioners' rights of burial and consequential jurisdiction of consistory court).

NOTE 13--As to the court's jurisdiction to determine a boundary dispute prior to the grant of a faculty to erect a fence see *Re St Peter and St Paul, Scrayingham* [1991] 4 All ER 411.

NOTE 17--1965 Act consolidated; see now New Towns Act 1981 s 20(7). 1971 Act s 128(6) now Town and Country Planning Act 1990 s 240(1), (2).

NOTE 19--A faculty allowing the exhumation and transfer of interred remains from one consecrated ground to another will be granted only for a good and proper reason, likely to be regarded as acceptable by right thinking members of the church at large: *Re Christ Church, Alsager* [1999] 1 All ER 117, [1998] 1 WLR 1394, Chancery Court of York, applied in *Re St Mary the Virgin, Hurley* [2001] 1 WLR 831.

NOTE 20--As to the principles to be applied, see *Re Atkins* [1989] 1 All ER 14. The discretion to grant a faculty for the exhumation of human remains from consecrated ground should only be exercised in strong and compelling circumstances: *Re St Peter's*

Churchyard, Oughtrington [1993] 1 WLR 1440, followed in *Re St Mary's Churchyard, Alderley* [1994] 1 WLR 1478. For further guidance on considerations as to whether a faculty for exhumation may be granted, see *Re Holy Trinity, Bosham* [2004] Fam 125. The beliefs of the Jewish and Christian communities concerning burial are sufficiently similar for a faculty to exhume the remains of a Jew buried in consecrated ground, for reburial in unconsecrated ground in a Jewish cemetery, to be granted: *Re Durrington Cemetery* [2001] Fam 33. It is necessary to consider the implications of the European Convention on Human Rights art 9 on a petition for exhumation: *Re Crawley Green Road Cemetery, Luton* [2001] Fam 308.

NOTE 23--See also *Re St Clements, Leigh-on-Sea* [1988] 1 WLR 720 (access to churchyard by way of disputed fence and gate).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(ii) Matters within the Faculty Jurisdiction/1316. Faculties relating to monuments.

1316. Faculties relating to monuments.

The jurisdiction of the ecclesiastical courts includes the power to control the placing of monuments¹ in churches, churchyards and consecrated burial grounds, and any subsequent dealings with those monuments². In practice this power is rarely, if ever, exercised in respect of monuments in burial grounds not belonging to the church³.

In respect of tombstones in churchyards and other burial grounds belonging to the church, whilst the principle is maintained that no monument may be introduced without permission, the incumbent's consent is in most cases treated as a sufficient authorisation, for the court in effect delegates to the incumbent the power to grant permission in ordinary cases without requiring the applicant to seek a faculty⁴. This delegated power is exercisable, however, only within such limits as are set by the court⁵. In cases which fall outside these limits, or where the incumbent's permission is refused, the requirement of a faculty becomes fully operative.

For the placing of monuments, including mural tablets, within a church a faculty is always required, and in this matter, as also in that of churchyard memorials, the courts have in recent times tended to exercise a stricter control than was customary in the past⁶. The nature and wording of an inscription proposed to be placed on a monument may constitute a ground for refusing a faculty for the monument⁷. A faculty can be granted even against the wishes of the incumbent⁸ or other person who holds the freehold⁹. The erection of a monument without lawful authority would be a trespass¹⁰.

Special provisions apply in the case of faculties for the moving, demolition, alteration or execution of other works to any monument¹¹ erected in or upon a church or other consecrated building or its curtilage or, with certain exceptions, upon consecrated ground¹². A court may in general grant a faculty for any such purpose even where the owner¹³ of the monument withholds his consent or cannot be found after reasonable efforts to find him have been made¹⁴, and whatever the date of any faculty authorising or affecting the monument which may have been granted previously¹⁵. But no such faculty may be granted if the owner, while withholding his consent, satisfies the court that he is, within a reasonable time, willing and able to remove the monument or so much of it as may be proved to be his property and to execute such works as the court may require to repair any damage caused by the removal¹⁶.

Approval is often given by faculty to schemes involving the removal of a considerable number of gravestones in one operation for the purpose of facilitating maintenance of the churchyard. It is the court's practice to require evidence of the steps taken (for example by local inquiries and press advertisement) to trace persons likely to have an interest in the monuments, to obtain advice as to the artistic and historical aspects of the proposals, and to impose suitable conditions as to the disposal of the gravestones, the making of a record of the inscriptions on them and other matters¹⁷.

¹ In this 'monument' context has a wide connotation. For the purposes of the Faculty Jurisdiction Measure 1964, s 3 (see *infra*), it includes a tomb, gravestone or other memorial and any kerb or setting forming part of it: s 3 (4).

² For provisions excluding the faculty jurisdiction in certain cases where monuments are disposed of in pursuance of pastoral scheme or redundancy order, see the Pastoral Measure 1968, s 65, Sch. 6.

³ See PARA 1309 *ante*.

4 *Re Woldingham Churchyard* [1957] 2 All ER 323 at 324, [1957] 1 WLR 811 at 813. See also *Hopper v Davis* (1754) 1 Lee 640 at 648; *Keet v Smith* (1875) LR 4 A & E 398 at 413, 414; on appeal (1876) 1 PD 73, PC.

5 See PARA 1310 note 13 ante.

6 This may be illustrated by the following extract from a statement by Chancellor Wigglesworth, circulated in the diocese of Bath and Wells in 1946: 'Only in quite exceptional cases, as where (for instance) the record of person's life is such that a memorial tablet commemorating that life is likely to be a source of inspiration to worshippers, or where the person commemorated has rendered outstanding service to Church or country, should a tablet be regarded as likely to be appropriate... Every parishioner and non-resident parochial elector has in relation to his parish church the right to present a petition asking for such faculty as he desires, and this statement should not be taken as prohibiting anyone from applying for a faculty to erect a tablet, but a chancellor must exercise a judicial discretion in every case which comes before him; no hard and fast rule can therefore be made; each case must be considered on its merits. It is the object of this statement to set out what in normal circumstances those merits are conceived to be'.

7 See *Brecks v Woolfrey* (1838) 1 Curt 880; *Keet v Smith* (1876) 1 PD 73, PC; *Egerton v All of Odd Rode* [1894] P 15; *Pearson v Stead, Stead v Pearson* [1903] P 66; *Dupuis v Parishioners of Ogbourne St George* [1941] P 119. As to the lawfulness of an inscription inviting prayers for the dead, see PARA 968, 1044 ante.

8 *Re Little Gaddesden Churchyard, ex Parte Cuthbertson* [1933] P 150.

9 *Rich v Bushnell* (1827) 4 Hagg Ecc 164; *Rugg v Kingsmill* (1868) LR 2 PC 59.

10 *Beckwith v Harding* (1818) 1 B & Ald 508.

11 For the meaning of 'monument', see note 1 supra.

12 Faculty Jurisdiction Measure 1964, s 3 (1). The exceptions comprise those consecrated burial grounds to which the Open Spaces Act 1906, s 11, applies or has been applied (see PARA 1317 post): Faculty Jurisdiction Measure 1964, s 3 (1).

13 'Owner' means the person who erected the monument and, after his death, the heir or heirs at law of the person or persons in whose memory it was erected: *ibid* s 3 (4). CF. para 1085 ante.

14 *Ibid* s 3 (2) (i).

15 *Ibid* s 3 (2) (ii).

16 *Ibid* s 3 (3). The court may in that event grant a faculty authorising such removal and for all purposes connected with it, and may make such orders as may be just as to the execution and cost of all necessary works: s 3 (3).

17 See PARA 1315 ante.

UPDATE

1316 Faculties relating to monuments

NOTES--Where diocesan regulations in respect of churchyards have not been complied with, the desires of the individuals concerned must be balanced against the longer term interests of the church and community in general: *Re St Hildeburgh, Hoylake* (2003) Times, 28 August (additions and enhancements around memorial stones).

NOTE 2--Now Pastoral Measure 1983 Sch 6.

NOTE 3--See *Re West Norwood Cemetery (No 2)* [1998] 1 All ER 606 (Consistory Court hearing concerning a cemetery acquired by the local authority, maintained in accordance with a scheme of management and consisting of both consecrated and unconsecrated ground).

NOTE 4--See also *Re St Mark's, Haydock (No 2)* [1981] 1 WLR 1167 (faculty sought as to rights between widow and deceased's friend to erect headstone).

NOTE 6--For an outline of the criteria to be considered on an application for a faculty authorising a memorial tablet, see *Re St Margaret's, Eartham* [1981] 1 WLR 1129. See *Re St Nicholas, Brockenhurst* [1978] Fam 157, [1977] 3 All ER 1027 (memorial tablet for two brothers; last male members of prominent local family; monumental record of family interesting contribution to local history); *Re St Edmund's Churchyard, Gateshead* [1995] 3 WLR 253 (plaque in Anglican churchyard commemorating Roman Catholic martyr not sanctioned); *Re St Mary's Church, Wimbledon* (2002) Times, 19 April (local connection with parish); *Re St Mary the Virgin, Oxford* [2009] 2 WLR 1381 (plaque to commemorate martyrs executed as heretics or traitors).

NOTE 7--See also *Re St Mark's, Haydock (No 2)* [1981] 1 WLR 1167 (photographs on tombstone of deceased and his car to be removed); *Re St Mary's, Fawkham* [1981] 1 WLR 1171 (photographs on tombstone inappropriate in an ancient English country churchyard); *Re St Chad's Churchyard, Bishop's Tachbrook* [1993] 1 All ER 208 (faculty for gilded lettering on headstone refused where diocesan regulations provided that such lettering was undesirable); *Re Holy Trinity Churchyard, Freckleton* [1995] 1 WLR 1588 (faculty for inscription on headstone with words 'dad' and 'granddad' refused, as familiar terms unnecessary to express affection for deceased).

NOTES 11, 12--As to faculties for the sale of accoutrements to monuments see *Re St Mary's, Broadwater* [1976] Fam 222, [1976] 1 All ER 148; *Re St Andrew's, Thornhaugh* [1976] Fam 230, [1976] 1 All ER 154. A monument and its accoutrements should be regarded as one entity: *Re St Andrew's, Thornhaugh*, at p 161. See, however, *Re St Bartholomew's, Aldborough* [1990] 2 All ER 440 (faculty for sale of funerary armour associated with tomb granted in light of (i) agreement by heir to transfer of ownership to church, and (ii) need for urgent repairs to church).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(ii) Matters within the Faculty Jurisdiction/1317. Faculties relating to disused burial grounds.

1317. Faculties relating to disused burial grounds.

The power of an ecclesiastical court to grant a faculty for the erection of any building¹ on a disused burial ground² is restricted by statutory provisions which make such erection unlawful except for the purpose of enlarging a church, chapel, meeting house or other place of worship³. It may therefore be necessary for the court to determine in a particular case whether the proposed works constitute the erection of a building, and if so whether they are for the purpose of such enlargement⁴.

The owner of a disused burial ground is empowered by statute to transfer it to a local authority⁵ for use as a public open space⁶. In the case of a churchyard or consecrated burial ground belonging to the church any such transaction must, according to ecclesiastical law, be authorised by faculty. A faculty will also be necessary to enable the local authority to exercise powers of management over the land so transferred⁷, to permit its use for games or sports⁸ and to authorise the moving of any tombstones or monuments⁹.

1 In the Disused Burial Grounds Act 1884 'building' includes any temporary or movable building: Open Spaces Act 1887, s 4. See further CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

2 In the Disused Burial Grounds Act 1884 'disused burial ground' means any burial ground which is no longer used for interments, whether or not it has been partially or wholly closed for burials under any statute or Order in Council: Open Spaces Act 1887, s 4. See further CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

3 Disused Burial Grounds Act 1884, s 3: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

4 For decisions on these questions, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1146.

5 'Local authority' means the council of any county, district, parish or London borough, the Common Council of the City of London and, where appropriate, the Greater London Council: Open Spaces Act 1906, s 1; Parish Councils Act 1957, s 15 (2), Sch. 2; London Government Act 1963, ss 58 (1), 93 (1), Sch. 18, Part II; Local Government Act 1972, s 1 (11).

6 See the Open Spaces Act 1906, s 6, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1162.

7 See *ibid* s 11 (1), (5), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1164.

8 See *ibid* s 11 (2), (5), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1164.

9 See *ibid* s 11 (4), (5), and CREMATION AND BURIAL vol 10 (Reissue) PARA 1166.

UPDATE

1317 Faculties relating to disused burial grounds

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-4--See also *Re St Ann's Church, Kew* [1977] Fam 12, [1976] 1 All ER 461 (extension for a choir vestry and church hall was an enlargement of a church); *Re St Thomas's, Lyminster* [1980] Fam 89, [1980] 2 All ER 84.

NOTE 3--See *Re St Luke's Chelsea* [1976] Fam 295, [1976] 1 All ER 609.

NOTE 5--As to faculties for erection of a crucifix: *Re St Mary The Virgin, Selling* [1980] 1 WLR 1545. References to local authorities include national park authorities: Environment Act 1995 Sch 9. As to national park authorities, see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526.

TEXT AND NOTE 9--See *Re St James's Heywood* [1982] 1 WLR 1289 (scheme for re-ordering gravestones).

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1318. Faculties relating to the contents of churches.

Subject to the latitude normally allowed in practice in matters of minor importance¹ a faculty is required for the introduction, alteration or removal of any ornament, furnishing or decoration in a church, whether or not it is a fixture². A faculty will not be granted to sanction an illegal article³, and questions concerning legality have often arisen in faculty proceedings, for example, in relation to aumbries and other receptacles for the reserved sacrament⁴, crosses and crucifixes, images and other representations, including stations of the Cross, candlesticks, sanctus bells, thuribles and confessional boxes⁵. Provided the article in question is not unlawful the grant or refusal of a faculty is a matter for the court's discretion⁶. If an article has been put into a church without a faculty a faculty is nevertheless needed for its removal, and may be granted even though the article was in the church at the time of its consecration⁷.

The movable goods of the church are in the legal ownership of the churchwardens as a quasi-corporation, but the power to dispose of the goods, by sale or otherwise, cannot be exercised without the authority of a faculty⁸. In an increasing number of cases in recent years faculties have been sought for the disposal, usually by sale at public auction, of valuable articles belonging to parish churches, especially church plate⁹. The jurisdiction of consistory courts to grant such faculties is not in doubt, even in the case of a proposed sale of communion vessels on the open market with no restrictions on their future use¹⁰, but according to reported decisions the discretion to allow a sale should be exercised sparingly¹¹, and it seems that a substantial burden rests on the petitioners, even in the absence of opposition, to satisfy the court that the sale is justified¹². Where the article to be disposed of is or may be of historic or artistic interest the judge may direct notice of the petition to be given to the Council for Places of Worship so that it may report or give evidence¹³.

The faculty jurisdiction has been extended to authorise the sale of books in certain parochial libraries¹⁴. Thus, any book in a parochial library appropriated to the use of the minister of a parish or place within the operation of the Parochial Libraries Act 1708 may be sold under the authority of a faculty and the proceeds of sale applied for such of the ecclesiastical purposes of the parish as may be directed¹⁵. Any question whether a library is within that Act and is so appropriated must be determined by the Charity Commissioners¹⁶.

¹ See PARA 1310 ante.

² As to the meaning of 'ornaments' and 'decorations', see PARA 961 ante. As to pews and fixtures generally, see PARA 1312 ante. As to the provisional authorisation of schemes for the re-ordering of church interiors, see PARA 1310 note 14 ante. Where a sharing agreement relates to a consecrated church the faculty jurisdiction does not apply in respect of movables required for the worship of any sharing church other than the Church of England: Sharing of Church Buildings Act 1969, s 5 (3); see PARA 1191 ante. For provisions excluding the faculty jurisdiction in the case of the disposal of the contents of redundant churches, see the Pastoral Measure 1968, s 64, and PARA 1127 ante.

³ *White v Bowron* (1873) LR 4 A & E 207 at 217; *St Ethelburga faculty Case* (1878) Trist 69 at 71; *Re St James the Great, Buxton, Vicar of St John the Baptist, Buxton v Parishioners of St John the Baptist, Buxton* [1907] P 368 at 376; *Re St Saviour's Hampstead* [1932] P 134 at 138; but see *Re Lapford (Devon) Parish Church* [1955] P 205, [1954] 3 All ER 484, CA.

⁴ See PARAS 965, 986 ante. The court usually requires evidence of the bishop's consent to reservation in the church concerned and makes the grant of a faculty subject to appropriate conditions.

⁵ See PARA 953 et seq ante, where these matters are fully discussed.

6 See PARA 1310 ante. In matters of this kind the court often grants a faculty with the reservation 'until further order': see PARA 1311 ante.

7 *Westerton v Liddell, Horne etc, Beal v Liddell, Parke and Evans* (1855) Moore's Special Report at 77, per Dr Lushington; *Davey v Hinde* [1901] P 95 at 116. See also PARAS 1077, 1311 ante, and Opinions of the Legal Board (5th Edn 1973) III/46, 47.

8 See PARA 553 ante. It is necessary also to obtain the consent of the parochial church council, which is the body responsible in law for the care of the movable goods: see PARA, 582 ante; and see *Re St Gregory's, Tredington* [1972] Fam 236 at 240, [1971] 3 All ER 269 at 272. Goods which are of minor importance, especially those of an impermanent nature, are commonly treated as being outside the scope of the faculty jurisdiction or alternatively as matters in respect of which it should not in practice be exercised: see note 1 supra. The faculty jurisdiction is in any case not regarded as appropriate to such things as the ornaments of the minister, as to which, see PARA 970 ante.

9 The subject has attracted much public attention and has been debated in the General Synod: see 'Treasures on Earth' (GS 132), a report by a working party of the Council for Places of Worship presented to the synod in 1973, in which reference was made at p. 24 to the occurrence of some thirty-five relevant court cases since 1965.

10 *Re St Gregory's Tredington* [1972] Fam 236, [1971] 3 All ER 269, overruling *Vicar and Churchwardens of St Mary, Northolt v Parishioners* [1920] P 97. See also *Re St Mary's Gilston* [1967] P 125, [1966] 2 All ER 408; *Re St Mary's, Westwell* [1968] 1 All ER 631, [1968] 1 WLR 513.

11 See *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269, where G. H. Newsom QC, Deputy Dean of the Arches, also expressed the opinion that faculties of this kind should seldom, if ever, be granted without a hearing in open court. As to considerations of security and insurance, see *Re St Helen's, Brant Broughton* [1974] Fam 16, [1973] 3 All ER 386 (sale of painting).

12 The existence of an emergency arising from an urgent need for repairs to the fabric of the church and the parochial church council's inability to provide or obtain the necessary funds may be a sufficient ground for allowing the sale; the fact that the articles are not required for use in the church and that by reason of their value and the high cost of insurance they must be kept permanently in a bank is a relevant consideration; and the possibility of other acceptable reasons for allowing a sale (eg the application of the proceeds to a different charitable and religious use in the parish or elsewhere) is not to be excluded: *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269. It is usual for the court, in granting a faculty, to impose conditions as to the manner in which the proceeds of sale are to be dealt with.

13 See the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, rr 5a, 6 (3) (amended by S.I. 1975 No. 135), and PARA 1323 post.

14 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (b) (ii).

15 Faculty Jurisdiction Measure 1964, s 4 (1). This is expressed to be notwithstanding anything to the contrary in the Parochial Libraries Act 1708, s 10, which provides that no book in a parochial library is to be alienable and that no book thereafter given to such a library is to be alienable without the Ordinary's consent and then only where there is a duplicate copy. Before granting a faculty for the sale of such a book the judge must seek and consider the advice of the diocesan advisory committee (as to which see PARA 1321 post): Faculty Jurisdiction Measure 1964, s 4 (1).

16 Ibid s 4 (2).

UPDATE

1318 Faculties relating to the contents of churches

TEXT AND NOTES--As to deposit of articles in places of safety see PARA 1318A.

TEXT AND NOTE 5--See *Re St Andrew's, Dearnley* [1981] Fam 50 (no faculty granted for electric candles); *Re St Edward the Confessor, Mottingham* [1983] 1 WLR 364 (petition to erect plaque over font refused as scene depicted inconsistent with doctrine relating to baptism).

TEXT AND NOTE 8--Faculty to sell altar frontal granted where money required to repay debt resulting from contract entered into without seeking faculty: *Re St Agnes's*,

Toxteth Park [1985] 1 WLR 641. See *Re St Lawrence, Stratford-sub-Castle* (2005) Times, 10 March (confirmatory faculty for sale of bell frame granted where frame had been sold in good faith in breach of requirement in schedule of works attached to faculty that it be reassembled in another church).

NOTE 8--As to faculties for the sale of accoutrements to monuments see *Re St Mary's, Broadwater* [1976] Fam 222, [1976] 1 All ER 148; *Re St Andrew's, Thornhaugh* [1976] Fam 230, [1976] 1 All ER 154. See also *Re Escot Church* [1979] Fam 125 (petition for faculty to remove painting title to which disputed). As to confirmatory faculty to sanction otherwise illegal prior sale of chattels, see *Re St John's with Holy Trinity, Deptford* [1995] 1 WLR 721. As to faculty to sell church silverware, see *Re St John the Baptist, Stainton by Langworth* (2006) Times, 26 May. See also *Re St Peter's, Draycott* [2009] Fam 93 (petitioners had not discharged burden of proof required to justify sale of font).

TEXT AND NOTE 12--See also *Re St Andrew's, Heddington* [1978] Fam 121 (sale of silver tankard not required for use in church and kept in vault allowed to finance urgent church repairs); *Re St Mary's, Warwick* [1981] Fam 170 (sale of parochial library to university); *Re St Mary Le Bow* [1984] 1 WLR 1363 (sale of silver not in regular use in church, for purpose of setting up fund to enable church to remain open); *Re St Mary of Charity, Faversham* [1986] Fam 143, [1986] 1 All ER 1 (sale of silver flagons to finance church restoration); *Re St Bartholomew's, Aldborough* [1990] 2 All ER 440 (sale of funeral accoutrement associated with tomb, following agreement by owner to transfer to church, to finance urgent church restoration); *Re St John's with Holy Trinity, Deptford* [1995] 1 WLR 721 (sale of redundant flagons, chalices and patens to assist church in financial difficulties); *Re Church of the Blessed Virgin Mary, Batcombe* [2005] All ER (D) 86 (Jan) (sale of painting too valuable to be left in unlocked church); and *Re St Mary, Grafton Regis* [2005] All ER (D) 10 (Oct) (sale of painting too costly to be insured and lacking historical connection with church); *Re St Mary the Virgin, East Chinnock* [2006] 1 WLR 266 (sale of coffin stools; faculty refused).

TEXT AND NOTES 15, 16--References to the appropriation of books omitted: 1964 Measure s 4(1), (2); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 7.

The combined effect of Ecclesiastical Jurisdiction Measure 1963 s 6, and Faculty Jurisdiction Measure 1964 s 4, is to override Parochial Libraries Act 1708 s 10: *Re St Mary's, Warwick* [1981] Fam 170.

NOTE 15--1708 Act s 10 amended: Courts Act 2003 Sch 8 para 1, Sch 10; Statute Law (Repeals) Act 2004.

TEXT AND NOTE 16--Reference to Charity Commissioners is now to Charity Commission: Faculty Jurisdiction Measure 1964 s 4(2) (amended by the Charities Act 2006 Sch 8 para 46).

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1318A. Deposit of articles in places of safety.

If it appears to an archdeacon that any article¹ appertaining to a church, being an article which he considers to be of architectural, artistic, historical or archaeological value, is exposed to danger of loss or damage and ought to be removed to a place of safety, he may order that the article be removed from the church and deposited in a specified place of safety². Unless the archdeacon is of the opinion that the article should be removed immediately, he must notify the churchwardens and any person having custody of the article and the parochial church council and advisory committee of the facts as they appear to him and inform them that he will consider any written representations made by them before a date specified in the notice and not less than 28 days after the service of the notice³. The archdeacon must not make an order before that date and must, before doing so, consider any representations duly made to him⁴. Where the archdeacon makes an order without giving the advisory committee an opportunity to make representations he must, as soon as practicable after the removal of the article, notify the committee of the removal⁵. If any person on whom an order is served refuses or fails to comply with it, the archdeacon may apply to the consistory court for an order that that person must deliver the article to the place of safety specified in the order⁶. The court must make the order if it is satisfied that the archdeacon's order was made in accordance with these provisions⁷. Where an order is made by an archdeacon, he must, within 28 days after the removal of the article, apply to the consistory court for a faculty authorising the retention of the article in the place of safety⁸.

¹ 'Article' does not include a record or register to which the Parochial Registers and Records Measure 1978 s 10(1) applies: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 21(7).

² Ibid s 21(1). An order must be in the prescribed form and must be directed to, and served on, the churchwardens and any other person having custody of the article: ibid s 21(4). Any order under these provisions may be served on any person by delivering it to him, or by leaving it at his proper address, or by post: ibid s 30(1). The proper address of such a person is his last known address: ibid s 30(2).

In any case where an archdeacon is of the opinion that an article falling within s 21(1) should be removed to a place of safety immediately the archdeacon may make an order in the form of the Faculty Jurisdiction Rules 2000, SI 2000/2047, App C Form 13: r 29(1). In any case not requiring an immediate order under r 29(1), an archdeacon may not make an order under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 21 unless and until (1) the churchwardens and any other person having custody of the article and the parochial church council and the advisory committee have been notified by in the form of App C Form 14 of the facts as they appear to the archdeacon and that written representations made by any of them will be considered if made before the date specified in the notice being not less than 28 days after the service of the notice; and (2) any representations duly made under head (1) have been considered: r 29(2). Subject to fulfilling the requirements of r 29(2) in any case falling within that paragraph the archdeacon may make an order in App C Form 15.

³ Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 21(2).

⁴ Ibid s 21(2).

⁵ Ibid s 21(3).

⁶ Ibid s 21(5).

⁷ Ibid s 21(5).

⁸ Ibid s 21(6).

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(iii) Parties and Bodies Concerned

1319. Persons interested.

A petition for a faculty is usually presented by the incumbent and churchwardens, with or without the addition of other parishioners, but it may be presented by any parishioner¹ or person having a personal interest², although mere volunteers are not recognised for this purpose³. Any person whose name is entered on the church electoral roll⁴ of the parish concerned but who does not reside in the parish is deemed for the purpose of faculty proceedings to have an interest as if he were a parishioner of that parish⁵. The whole body of parishioners has an interest in the church and churchyard⁶ and therefore the petition will ordinarily be expected to show that the application has been approved by the parochial church council⁷, but neither the wishes of the council nor those of the incumbent or the churchwardens are conclusive, and the court may entertain a petition notwithstanding their opposition⁸.

The incumbent and churchwardens, supported by a resolution of the parochial church council, are the proper parties to apply under the alternative procedure by archdeacon's certificate⁹.

For the purpose of faculty proceedings the archdeacon of the archdeaconry in which the parish concerned is situated is deemed to be interested as such¹⁰. The court is entitled to expect him, as the bishop's officer, to help it by entering appearance in any case of difficulty in which the court invites him to do so and by instructing solicitors and counsel so that the petitioner's witnesses may be properly cross-examined, the diocesan advisory committee's witnesses carefully examined in chief and the law thoroughly argued: if he wishes to oppose the petition he may set up a positive case by his pleading; if he supports it or is neutral he should simply give instructions that the petitioners be put to proof¹¹. If the archdeaconry is vacant or the archdeacon is incapacitated by absence or illness from exercising or fulfilling his rights and duties under the Faculty Jurisdiction Measure 1964 or if he is, in the bishop's opinion, for any other reason unable or unwilling to act, such other person as the bishop appoints in writing has power to act in the archdeacon's place in any particular case¹².

1 *Batten v Gedy* (1889) 41 ChD 507; *Kensit v Rector of St Ethelburga, Bishopsgate Within* [1900] P 80; *Davey v Hinde* [1901] P 95; *Davey v Hinde* [1903] P 221. A member of Parliament may petition in respect of St Margaret's, Westminster: *Vincent v Eyton* [1897] P 1 at 10. In respect of that church the court may require the approval of representatives of the House of Commons: *Re St Margaret's, Westminster* [1905] P 286.

2 Eg the personal representatives of a deceased parishioner in respect of a faculty for a monument to or vault for him (*Hansard v Parishioners and Inhabitants of St Matthew, Bethnal Green* (1878) 4 PD 46 at 54); or the appropriate government minister in respect of alterations to churches near airfields in the interests of air safety (*Re St James', Bishampton, Re St Edburga's, Abberton* [1961] 2 All ER 1, [1961] 1 WLR 257; revse. on another point sub nom. *Re St Edburga's, Abberton* [1962] P 10, [1961] 2 All ER 429). In the case of a churchyard closed by Order in Council the local authority is in practice frequently a petitioner and, if not a petitioner, should be specially cited where it is responsible for the maintenance of the churchyard: Opinions of the Legal Board (5th Edn 1973) III/30. The court may direct interested persons to be joined as petitioners: see *Re St Peter's, Bushey Heath* [1971] 2 All ER 704, [1971] 1 WLR 357.

3 See *Lee v Fagg* (1874) LR 6 CP 38, PC; *Noble v Reast* [1904] P 34. There have been several unreported instances in different dioceses where the court has refused to hear a society of religious, antiquarian or aesthetic character whose only interest has been that the faculty sought is in accordance with or contrary to the society's policy. But in some cases the court may receive evidence from persons who are not, for the purpose of presenting a petition, persons having an interest: cf. the Faculty Jurisdiction Measure 1964, s 2 (1) (iv) (b); Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002. r 6 (2)-(4), and PARA 1326 post.

4 As to the church electoral roll, see PARA 591 et seq ante.

5 Faculty Jurisdiction Measure 1964, s 9 (1). As to persons interested in the case of a guild church, see PARAS 607, 1308 ante.

6 *Vicar and One Churchwarden of St Botolph without Aldgate v Parishioners of St Botolph without Aldgate* [1892] P 161 at 167.

7 The form of petition prescribed by the Faculty Jurisdiction Rules 1967, r 4 (1), Appendix, Form 6 (see Court Forms), requires that a copy of the council's resolution Accompany the application. See also *St Magnus-the-Martyr Parochial Church Council v Chancellor of the Diocese of London* [1923] P 38 at 45, per Sankey J; and *Norfolk County Council v Knights and Caister-on-Sea Joint Burial Committee* [1958] 1 All ER 394n, [1958] 1 WLR 309, where an application which was opposed by the parochial church council was entertained but was ultimately dismissed. An application for an archdeacon's certificate must always have the council's support: see *infra*.

8 See PARA 1310 ante, and the cases there cited. See also *Bradford v Fry* (1878) 4 PD at 99; *Vicar and One Churchwarden of St Botolph without Aldgate v Parishioners of St Botolph without Aldgate* [1892] P 161. In a proper case a faculty will issue even if both churchwardens oppose it: *Rector of St Anne's, Limehouse v Parishioners of St Anne's, Limehouse* [1901] P 73. While a court would not lightly grant a faculty in opposition to the wishes of the parochial church council cases may occur in which it would think it justifiable and perhaps necessary to do so, for example in proceedings for the removal of an illegal ornament or structure. As to the minister's and churchwardens' duty to obtain a faculty when the law requires one, see the Revised Canons Ecclesiastical, Canon F13 para 3, and PARA 552 ante.

9 See the Faculty Jurisdiction Measure 1964, s 12 (1), and PARA 1331 post.

10 *Ibid* s 9 (1). He is thus entitled to intervene. As to his costs, see s 9 (3), and PARA 1328 post.

11 *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269. Before intervening, however, the archdeacon must obtain written approval from the diocesan board of finance: see PARA 1328 note 6 post.

12 Faculty Jurisdiction Measure 1964, s 9 (2). 'Bishop' means the bishop of the diocese concerned: s 15. In making such an appointment the bishop may act on such evidence of the archdeacon's incapacity as he thinks fit, and a statement of the fact of his incapacity in the instrument of appointment is conclusive: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 11 (1). For the instrument of appointment, see r 11 (2), Appendix, Form 12.

UPDATE

1319 Persons interested

TEXT AND NOTES--1964 Measure s 9 replaced: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 16, Sch 8. Proceedings for obtaining a faculty may now be instituted by (1) the archdeacon of the archdeaconry in which the parish concerned is situated, or (2) the minister and churchwardens of the parish concerned, or (3) any other person appearing to the court to have a sufficient interest in the matter: s 16(1). Remaining changes are noted *infra*.

NOTE 2--See *Re St Luke's, Chelsea* [1976] Fam 295, [1976] 1 All ER 609 (persons who are ancillary parties to a local authority's petition are competent additional petitioners); *Re St John's with Holy Trinity, Deptford* [1995] 1 WLR 721 (auctioneers allowed to petition for faculty for sale of church items).

NOTE 5--1964 Measure s 9(1) now Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 16(2).

NOTE 7--1967 Rules replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047, App C Form 2.

NOTE 10--1964 Measure s 9(1), (3) now Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 16(2), (4).

TEXT AND NOTE 12--1964 Measure s 9(2) now Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 16(3). A bishop may also appoint a person to act in the archdeacon's place if it would be inappropriate for the archbishop to act: s 16(3). In making an appointment of a person to act in place of an archdeacon on the ground of incapacity, the bishop may act on such evidence of the incapacity of the archdeacon as he thinks sufficient, and a statement of the fact of his incapacity in the instrument of appointment is conclusive: SI 2000/2047 r 28(1). An instrument of appointment must be in App C Form 12: r 28(2).

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1320. Intervention of bishop.

Generally speaking the bishop cannot personally intervene in a matter requiring a faculty, and his doing so may lead to misapprehension and mistake¹. The chancellor, however, takes no jurisdiction but that which his patent of appointment confers, and in some dioceses the right is reserved to the bishop to sit in the consistory court, either alone or with the chancellor, for the hearing of faculty cases².

¹ *Harper v Forbes and Sisson* (1859) 5 Jur NS 275 at 276, per Dr Lushington; but see *Palmer v Bishop of Exeter* (1723) 1 Stra 576; and see PARA 1324 note 1 post.

² See the Ecclesiastical Jurisdiction Measure 1963, s 46 (1) proviso; Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 16; and see PARA 1278 ante, 1330 post.

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1321. Diocesan advisory committee and Council for Places of Worship.

In every diocese there is an advisory committee for the care of churches, known as the diocesan advisory committee, consisting of the archdeacons of the diocese and such other persons as the bishop may be writing appoint, whose term of office is five years, although they are eligible for reappointment¹. The bishop may appoint one of the members to be chairman¹.

If required to do so the committee must advise the judge of any court², intending applicants for faculties³, persons building new churches or converting buildings for the purpose of churches or erecting buildings or converting existing buildings with the intention that they be licensed for public worship⁴, and persons owning or responsible for the upkeep of unconsecrated buildings which are so licensed⁵. The committee must advise an archdeacon before he issues a certificate⁶ and he may not do so without its approval⁷. It may make its own rules of procedure and may adopt any general procedural regulations made by the Council for Places of Worship⁸.

The court may not grant a faculty for the total or partial demolition of a church where another church is to be erected on the same site to take its place⁹, or the partial demolition of a church where the remaining part is to be used for the public worship of the Church of England¹⁰ unless, inter alia, written notice has been given by an officer of the court to the Council for Places of Worship and the diocesan advisory committee¹¹, and the judge has considered such advice as the committee tenders to the court¹² and, if it applies to give evidence, has heard evidence from the council¹³. Nor may it grant a faculty for the partial demolition of a church on being satisfied that the demolition is necessary for the purpose of the repair, alteration or reconstruction of the church unless such notice has been given to the council and the judge has considered any advice which it may tender¹⁴. Before granting a faculty for the sale of books in a parochial library the judge must require the committee to advise him and must consider such advice as it may tender¹⁵. The judge may direct notice of a petition for the disposal of an article which he thinks may be of historic or artistic interest to be served on the council¹⁶, in which case, within six weeks of receiving the notice, the council may make a report to the judge¹⁷ or a member of the council or person authorised by it may apply to the registrar to give evidence in the proceedings¹⁸.

1 Faculty Jurisdiction Measure 1964, s 13 (1); see PARA 523 ante.

2 Ibid s 13 (2) (a). 'Court' means an ecclesiastical court of any province or diocese: s 15. The judge may at any stage of faculty proceedings require the committee's advice, and may refer any report of the committee to the Council for Places of Worship (as to which see note 8 infra) for further consideration and advice; and the substance of any report made by the committee or council must be disclosed to the parties: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 10 (2) (amended by S.I. 1975 No. 135). See also the Faculty Jurisdiction Measure 1964, ss 2 (1) (ii)-(iv), (3) proviso, 4 (1), and infra. In that Measure 'judge' means the judge of any court as defined above: s 15. In the Faculty Jurisdiction Rules 1967 'judge' means the chancellor of the diocese in which the church, churchyard or other place concerned is situated, and includes any person appointed to act as deputy: r 2 (1).

3 Ibid s 13 (2) (b). An intending petitioner who requires the committee's advice must submit to it all necessary designs, plans or other documents giving particulars of the proposed works or other purposes; if the committee decides to recommend the works or purposes its recommendation may be indorsed on the documents and signed by the chairman or secretary, and if no such indorsement is made the committee must make a separate report to the intending petitioner, which may be in the form of the relevant committee minutes so signed: Faculty Jurisdiction Rules 1967, r 10 (1). The committee's indorsement or report must accompany the petition when it is lodged: r 4 (4).

- 4 Faculty Jurisdiction Measure 1964, s 13 (2) (c).
- 5 Ibid s 13 (2) (d).
- 6 le under ibid s 12: s 13 (2). As to archdeacons' certificates, see PARA 1331 et seq post.
- 7 Ibid s 12 (4). (a). An applicant for a certificate may seek the committee's advice in the same manner as may an intending petitioner for a faculty: see the Faculty Jurisdiction Rules 1967, rr 3 (3), 10 (1) PARA 1331 post, and note 3 supra.
- 8 Ibid r 10 (3). In the Faculty Jurisdiction Measure 1964 'council' means the Central Council of Diocesan Advisory Committees for the Care of Churches as constituted in accordance with the Church Assembly resolution passed on 18th June 1958, or any body subsequently constituted to exercise the functions of the council as so constituted: Faculty Jurisdiction Measure 1964, s 15. In 1972 it was renamed the Council for Places of Worship and became a permanent commission of the General Synod. It co-ordinates and assists the work of diocesan advises on the committees and holds conferences of members of those committees; it advises on the construction and care of churches, their contents and curtilages, the layout of new churches and the re-ordering of old ones, and provides information and publishes booklets relating to the care of churches. See further the Church of England Year Book 1975, p. 35.
- 9 See the Faculty Jurisdiction Measure 1964, s 2 (2), and PARA 1314 ante.
- 10 See ibid s 2 (3) (i), and PARA 1314 ante.
- 11 Ibid s 2 (1) (ii).
- 12 Ibid s 2 (1) (iii).
- 13 Ibid s 2 (1) (iv) (a). As to the application, see the Faculty Jurisdiction Rules 1967, r 6 (2), and PARA 1326 note 1 post. The judge may, however, call for its evidence of his own motion: see r 6 (4) (added by S.I. 1975 No. 135), and PARA 1326 post.
- 14 Faculty Jurisdiction Measure 1964, s 2 (3) proviso: see PARA 1314 ante.
- 15 Ibid s 4: see PARA 1318 ante.
- 16 See the Faculty Jurisdiction Rules 1967, r 5A (added by S.I. 1975 No. 135), and PARA 1323 post.
- 17 Ibid r 6 (3) (a) (substituted by S.I. 1975, r 5A (added by S.I. 1975 No. 135)). The substance of any such report must be disclosed to the parties: r 6 (7) (added by S.I. 1975 No. 135).
- 18 Ibid r 6 (3) (b) (substituted by S.I. 1975 No. 135). As to the application, see PARA 1326 note 1 post.

UPDATE

1321 Diocesan advisory committee and Council for Places of Worship

TEXT AND NOTES--Faculty Jurisdiction Rules 1967 replaced: Faculty Jurisdiction Rules 2000, SI 2000/2047.

TEXT AND NOTES 1-6--1964 Measure s 13 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 2(8). As to constitutions of diocesan advisory committees see now s 2, Schs 1, 2; and PARA 523.

In every diocese the secretary to the advisory committee must compile and maintain a register of all petitions for a faculty referred to it for advice, and must ensure that the register is available for inspection by the public by prior appointment at a place in the diocese designated by the bishop: s 15(3). On receipt of any petition for a faculty for which the advice of the advisory committee is required to be sought, the registrar must notify the secretary to the advisory committee of the details of the petition in the prescribed form and the secretary must enter the details in the register of petitions: SI 2000/2047 r 11.

TEXT AND NOTE 7--1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. As to delegation to archdeacons of the power to grant faculties see PARA 1331-1333.

NOTE 8--Definition of 'council' repealed: Dioceses, Pastoral and Mission Measure 2007 Sch 7.

By a resolution passed on 7 July 1980 the General Synod adopted a report of the Standing Committee (GS 449) setting out, inter alia, a new constitution for the Council for the Care of Churches (formerly the Council for Places of Worship), which was reconstituted as a permanent commission of the General Synod as from 1 March 1981.

The Council for the Care of Churches is under a duty to compile and maintain a list specifying certain buildings which are subject to special care: Care of Places of Worship Measure 1999 s 1(1). The following buildings are, on application made in the prescribed manner (see Sch 1), eligible for inclusion in the list: (1) a building which is subject to any peculiar jurisdiction and which is used for worship according to the rites and ceremonies of the Church of England; (2) a building which is a chapel forming part of an episcopal house of residence; (3) a building which is a chapel or other place of worship owned or leased by or held in trust for a religious community; (4) a building (not being one falling within heads (1)-(3)) which is part of a university, college, school, hospital, Inn of Court, almshouse or other public or charitable institution and of which the primary use is for worship according to the rites and ceremonies of the Church of England or for joint worship by members of the Church of England and other Churches; and (5) a building which is subject to a sharing agreement made on behalf of the Church of England in pursuance of the Sharing of Church Buildings Act 1969 (see PARA 1186 et seq) and which is used for worship: 1999 Measure s 1(2). Where an application is or has been made for the inclusion in the list of any building, an application may also be made for the inclusion in the list of an adjoining building which is used wholly or mainly as a vestry or sacristy: s 1(3). Where an application is or has been made for the inclusion in the list of a building which falls within heads (1)-(5), and is detached from any other building, an application may also be made for the inclusion in the list of the curtilage of the building, of any monument within the curtilage or of any object or structure forming part of the land within the curtilage which is used wholly or mainly for purposes ancillary to the purposes for which the building is used: s 1(4). A building to which the Care of Cathedrals Measure 1990 (see PARA 633A) applies, or which is subject to the faculty jurisdiction of a consistory court, or which falls within the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 4(d)-(g) is not eligible to be included in the list: 1999 Measure s 1(5).

On receipt by the Council of an application made in the prescribed manner for the inclusion of a building in the list or the removal of a building from the list, the building must be included in the list or removed from the list, as the case may be, unless the Council is satisfied that the application does not comply with the requirements of the 1999 Measure or any rules relating to the application: s 2(1). If, in respect of a building included in the list, the Council considers that the building is no longer eligible for inclusion, or any order or direction of a court in connection with the court's faculty jurisdiction, or any undertaking given in connection with the application for inclusion, has not been complied with, the Council may, after giving the relevant person or body an opportunity to show reason to the contrary, remove the building from the list: s 2(2). The removal of a building from the list does not affect the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 13 (see PARA 1311A) in its application to the building or anything done under that section before the removal: 1999 Measure s 2(3).

A building included in the list and any object or structure fixed to it is subject to the faculty jurisdiction of the consistory court of the diocese in which the building is situated and the provisions of any Measure, rules or other instrument relating to the

faculty jurisdiction (except the Faculty Jurisdiction Measure 1964 s 7 and the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 11(1)-(7)) apply in relation to the building and any such object or structure: 1999 Measure s 3(2). The Faculty Jurisdiction (Care of Places of Worship) Rules 2000, SI 2000/2048, lay down the procedure for faculty proceedings involving buildings, objects, structures or land which are brought within the faculty jurisdiction under the 1999 Measure. In general, the provisions of SI 2000/2048 mirror the provisions of SI 2000/2047, with certain variations. Further, SI 2000/2047 does not now apply to any building, curtilage, object or structure which is subject to the faculty jurisdiction by virtue of the 1999 Measure s 3(2) and to which SI 2000/2048 applies: SI 2000/2047 reg 37.

In the case of a building falling within head (2), the Ecclesiastical Jurisdiction Measure 1963 s 46(1) (see PARA 1278) has effect as if the proviso were omitted: 1999 Measure s 3(3). Except in the case of a building falling within head (2), certain provisions of the Inspection of Churches Measure 1955 apply in relation to the building as if the building were a church: 1999 Measure s 3(4). If a chapel forming part of Lambeth Palace is included in the list the Vicar-General's court of the province of Canterbury must, for the purposes of s 3(2), exercise the faculty jurisdiction of the consistory court in relation to the chapel (the registrar of the province of Canterbury acting as registrar of the Vicar-General's court) and references to a consistory court or to the registrar of a diocese in any Measure, rules or other instrument relating to the faculty jurisdiction must be construed accordingly, and the Council must, in the application of any such Measure, rules or other instrument, discharge the functions of the Diocesan Advisory Committee: s 3(5).

TEXT AND NOTES 9-14--1964 Measure s 2 replaced: 1991 Measure ss 17, 18, Sch 8. 1964 Measure s 2(1)(i)-(iv) now 1991 Measure s 17(4)(a)-(d). The written consent of the bishop must also be obtained: s 17(4)(a)(i). The diocesan registrar must now give notice to the Council for the Care of Churches: s 17(4)(b). 1964 Measure s 2(3) proviso not reproduced. 'Church' is now defined as including any building or part of a building which is licensed for public worship according to the rites and ceremonies of the Church of England and is subject to the faculty jurisdiction: 1964 Measure s 15; 1991 Measure Sch 7. See further PARA 1314.

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(iv) Procedure for obtaining Faculties

1322. Petition for faculty.

Proceedings for a faculty are heard in the consistory court¹ and are begun by petition², which must be lodged at the diocesan registry³ together with⁴ (1) any necessary designs, plans or other documents giving particulars of the proposed works or purposes for which the faculty is required⁵; and (2) if the diocesan advisory committee's advice has been sought⁶, its recommendations of the proposals⁷ or its report on them⁸.

1 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (b): see PARA 1284 ante.

2 For the prescribed form of petition, see the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 4 (1), Appendix, Form 6, and Court Forms. If the petition is for a faculty for the total or partial demolition of a church it must further state which of the grounds specified in the Faculty Jurisdiction Measure 1964, s 2 (see PARA 1314 ante) are relied on, giving full particulars of those grounds and of the circumstances giving rise to the petition and of the arrangements proposed to meet the situation arising from the demolition, including arrangements for disposing of the church fittings and ornaments, and must give information on any other matters on which the judge should be informed: Faculty Jurisdiction Rules 1967, r 4 (2).

3 Ibid r 4 (5). For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table II, Fees 3, 4, 7.

4 In the case of proceedings for the total or partial demolition of a church an additional copy of the petition and accompanying documents must be lodged: Faculty Jurisdiction Rules 1967, r 4 (5).

5 Ibid r 4 (3). In the case of a petition for the disinterment of a body the court may require verification, by affidavit or otherwise, of the grounds on which a faculty is sought, together with information as to the obtaining of the Secretary of State's licence where this is required, the comments of the relevant incumbents or cemetery authorities, an undertaking that all will be done reverently and according to any licence and any appropriate byelaws and regulations and any directions of the local medical officer of health. See also PARA 1315 ante, and CREMATION AND BURIAL vol 10 (Reissue) PARA 1125 et seq.

6 See PARA 1321 text and note 3 ante.

7 This may be indorsed under the Faculty Jurisdiction Rules 1967, r 10 (1), on the designs, plans or other documents: r 4 (4); see PARA 1321 note 3 ante.

8 Ibid r 4 (4).

UPDATE

1322 Petition for faculty

TEXT AND NOTES--1967 Rules replaced: see now Faculty Jurisdiction Rules 2000, SI 2000/2047 (see PARA 1323).

NOTES 7, 8--See *Re St Andrew, Cheadle Hulme* [1994] 1 WLR 880 (committee's function an advisory one; its advice is to the court, which has sole responsibility for grant of faculties).

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1323. Citation and notice of petition.

The diocesan registrar¹ must lay every faculty petition and its supporting documents before the judge² who, if he considers it a fit case³, must (save in the cases specified below) direct that a general citation⁴ be issued and executed by affixing the original or a copy for a continuous period of not less than ten days including two Sundays on or near the principal door of such of the churches or places of worship⁵ in the parish as the judge may direct⁶. The citation or copy must be returned to the registrar with a certificate of execution duly completed on it⁷. If the judge directs or the law otherwise requires any person to be specially cited⁸ the registrar must serve a copy of the citation on him⁹. Any person cited may not more than fourteen days after the first affixing or serving of the citation enter an appearance by lodging at the diocesan registry a notice in writing stating generally that he objects to the proposed faculty being granted¹⁰.

The judge may, however, within certain limits, dispense with the citation in the case of a petition for the exhumation of any human remains. If he is satisfied in such a case that any near relatives of the deceased still living and any other persons who in his opinion it is reasonable to regard as being concerned in the matter are the petitioners or consent to the faculty being granted he may decree the issue of the faculty forthwith without any citation¹¹, and in any other such case he may dispense with the issue of a general citation and instead direct that any of the persons referred to above who are not the petitioners be specially cited¹².

Where a faculty is sought for the total or partial demolition of a church with a view to the erection of another church on the same site, or for the demolition of part of a church with a view to the continued use of the remaining part for public worship¹³ (but not where a partial demolition is necessary for the purposes of repair, alteration or reconstruction¹⁴) notice stating the substance of the petition must be published by the petitioners in the London Gazette not more than four weeks after the lodgment of the petition and in such other newspapers as the court may direct within the period specified in the direction or, if no period is so specified, not more than fourteen days after the giving of the direction¹⁵, and an officer of the court must give notice of the petition to the Council for Places of Worship and to the diocesan advisory committee¹⁶. In the case of a petition for a faculty for the disposal of an article¹⁷ which in the judge's opinion is or may be an article of historic or artistic interest he may direct the registrar to serve written notice of the petition on the Council for Places of Worship, in which case he must direct the petitioner to serve on the council a copy of the petition and accompanying documents¹⁸. In any other particular case the judge may if he thinks fit direct the publication in newspapers or otherwise of notice of the petition¹⁹.

1 'Registrar' means the registrar of the diocese in which the church, churchyard or other place concerned is situated, and includes any person appointed to act as deputy: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 2 (1). If the judge is of opinion that because the registrar has acted for any of the parties or has otherwise been personally connected with the proceedings he ought not to sit as clerk of the court at the hearing, he must appoint another practising solicitor to sit as clerk in place of the registrar: r 11A (added by S.I. 1975 No. 135).

2 For the meaning of 'judge', see PARA 1321 note 2 ante.

3 If any illegality or other objection appears on the face of the petition the petitioner will be required to justify the petition as a condition of the citation.

4 For the form of citation, see the Faculty Jurisdiction Rules 1967, Appendix, Form 7, and Court Forms. For fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table 11, Fees 8-12.

5 'Places of worship' means a building licensed for public worship and subject to the faculty jurisdiction by virtue of an order under the Faculty Jurisdiction Measure 1964, s 6 (for which see PARA 1308 ante): Faculty Jurisdiction Rules 1967, r 2 (1).

6 Ibid r 5 (1) (amended by S.I. 1975 No. 135). Such directions must include the parish church or one or more of the parish churches in the parish and, if the application relates to a church or place of worship which is not a parish church, that church or place of worship: r 5 (1) (amended by S.I. 1975 No. 135). Where a petition concerns two parish churches and the citation is not issued and executed in both of them a faculty subsequently issued is a nullity: *Re St Michael the Archangel, Brantham, and St Peter with St Mary at Quary, Ipswich* [1962] 3 All ER 609, [1962] 1 WLR 1067.

7 Faculty Jurisdiction Rules 1967, r 5 (1).

8 Eg a person who has done some act requiring a faculty without first obtaining one, where in subsequent faculty proceedings an order for costs is sought against him and it is consequently necessary to add him as a party: see the Faculty Jurisdiction Measure 1964, s 5 (2); *R v North, ex parte Oakey* [1927] 1 KB 491, CA; and PARA 1328 post. In the majority of cases, however, the reason for special citation of a person is that he is likely to have a special interest in the proceedings: see eg para 1319 note 2 ante.

9 Faculty Jurisdiction Rules 1967, r 5 (3). As to service, see PARA 1329 post.

10 Ibid r 5 (4). The notice must be signed by the objector or his counsel or solicitor: r 5 (10). A copy must first be served on the adverse party or his solicitor, and the copy lodged must be indorsed with the date of service and the name of the person serving it: r 5 (10). For fees, see the Legal Officers Fees Order 1975, Schedule, Table II, Fees 15, 16.

11 Faculty Jurisdiction Rules 1967, r 5 (1A) (a) (added by S.I. 1975 No. 135).

12 Ibid r 5 (1A) (b) (added by S.I. 1975 No. 135).

13 Ie under the Faculty Jurisdiction Measure 1964, s 2 (2), (3) (i): see PARA 1314 ante.

14 I.e under ibid s 2 (3) (ii).

15 Ibid s 2 (1) (i); Faculty Jurisdiction Rules 1967, r 5 (2).

16 Faculty Jurisdiction Measure 1964, s 2 (1) (ii). A similar requirement applies also to a faculty under s 2 (3) (ii) where partial demolition is proposed for the purpose of repair, alteration or reconstruction: s 2 (3) proviso.

17 'Article' includes a part of a building, any thing affixed to land or a building, and any part of an article: Faculty Jurisdiction Rules 1967, r 5A (2) (added by S.I. 1975 No. 135).

18 Ibid r 5A (1) (added by S.I. 1975 No. 135). The council may then report or apply to give evidence: see r 6 (3) (substituted by S.I. 1975 No. 135), and PARA 1321 ante.

19 Ibid r 5 (2).

UPDATE

1323 Citation and notice of petition

TEXT AND NOTES--1967 Rules replaced: see the Faculty Jurisdiction Rules 2000, SI 2000/2047.

Before submitting a petition for a faculty in the consistory court intending applicants should seek the advice of the advisory committee in respect of the works or other proposals for which a faculty is required (except where the action proposed relates exclusively to exhumation or the reservation of a grave space): SI 2000/2047 r 3(1). Except in a case within r 3(4) (see *infra*) intending applicants should submit to the advisory committee designs, plans, photographs and other documents giving particulars of the works or other proposals together with a summary list of the works or proposals: r 3(2). Where significant changes to a listed church are proposed the

intending applicant should (1) provide the advisory committee (in addition to the particulars required by r 3(2) above) with a statement of significance and a statement of needs; and (2) if the works fall within App B para 1 consult English Heritage, such of the national amenity societies as appears likely to have an interest in the church or the works, and the local planning authority in accordance with App B: r 3(3). Where the intending applicants are proposing to carry out works to a tree or trees in a churchyard or in a consecrated burial ground for which a faculty is required they must complete App C Form 16 and send it to the advisory committee at the time of seeking the advice of the advisory committee in respect of the proposed works: r 3(4). If the advisory committee decides to recommend the works or proposals or to raise no objection to them its decision together with any provisos must be set out in a certificate in App C Form 1 and must be sent to the intending applicants together with the designs, plans, photographs and other documents which were submitted to the advisory committee under r 3(2) and are the subject of the certificate: r 3(5). If the advisory committee decides not to recommend the works or proposals it must inform the intending applicants by way of a certificate in App C Form 1 and must advise them that they are entitled to petition for a faculty from the chancellor, if they so wish, notwithstanding the committee's decision: r 3(6). When the advisory committee issues a certificate under r 3(5) or r 3(6) the certificate may include a recommendation to the intending applicants that they should consult English Heritage, or the local planning authority, or one or more of the national amenity societies, or the Council for the Care of Churches or any other body or person about some or all of the works or other proposals for which a certificate is sought if they have not already done so, and the advisory committee must consider including such a recommendation in any case where it appears to the committee that the works involve alteration to or extension of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest, or are likely to affect the archaeological importance of the church or archaeological remains existing within the church or its curtilage, or in the case of an unlisted church in a conservation area, will involve demolition affecting the exterior of the church: r 3(7).

As soon as they have received the advice of the advisory committee under r 3(5) or r 3(6) the applicants may submit to the diocesan registry a petition for a faculty in App C Form 2 in respect of the works or other proposals and (a) the works or other proposals must be fully and accurately stated in the petition and must be the same as those in respect of which the advisory committee has supplied a certificate in App C Form 1 under r 3(5) or r 3(6); and (b) any designs, plans, photographs and other documents giving particulars of the works or proposals for which the faculty is required, together with the certificate of the advisory committee relating to those documents, must be submitted with the petition: r 4(1). Where significant changes to a church are proposed a copy of the designs, plans, photographs and other documents submitted with the petition must be displayed in the church to which the works or other proposals relate and must remain on display until the petition for a faculty has been determined: r 4(2). As soon as they have received the advice of the advisory committee under r 3(5) or r 3(6) in respect of works within r 3(4) the applicants may send or deliver to the diocesan registry the petition for a faculty in App C Form 16 which was considered by the advisory committee: r 4(3). Notwithstanding that any of the requirements of r 3 have not been complied with a petition may at any time be submitted to the diocesan registry and every petition must (subject to r 36: see PARA 1330 post) be in App C Form 2 or Form 16: r 4(4).

A petition for a faculty for the partial demolition or demolition of a church must include all such statements and information, so far as relevant, as are required by App C Form 2: r 5.

As soon as a petitioner is ready to submit a petition for a faculty the petitioner must fill in the public notice in App C Form 3 (except where the petitioner is not the minister or a churchwarden or where the petition relates to exhumation or reservation of a grave space) and must describe the works or proposals in the public notice in the same manner as they are described in the schedule to the petition: r 6(1). Notwithstanding r 6(1), any petitioner may, if he so wishes, consult the registrar for advice prior to completing any petition or public notice, and he should do so in respect of a public notice where the petition relates to a matter which is not within App A: r 6(2). As soon as a petitioner has filled in the public notice he must immediately (i) send or deliver to the registry the petition and the documents required by head (b) above and a copy of the completed public notice; and (ii) display the public notice in the prescribed place and manner save that if he is not the minister or a churchwarden he must send the public notice to the registrar for directions about display; and (iii) send a copy of the public notice to English Heritage or other grant making body in accordance with the terms of any previous grant: r 6(3). For further provision relating to the public notice of a petition for a faculty see rr 6(4)-(6), 13.

Where a petition for a faculty (A) concerns an article of particular historic, architectural, archaeological or artistic interest, and involves the introduction, conservation, alteration or disposal of that article; (B) involves the alteration to or extension of a listed church or re-ordering of any church, which is likely in the opinion of the chancellor significantly to affect (when completed) the setting of any such article as is described in head (A) above; or (C) involves the movement or removal of any such article, which in the opinion of the advisory committee may be adversely affected thereby unless specific precautions are taken then, unless the chancellor is satisfied that there has already been consultation with the Council for the Care of Churches in respect of the proposals the subject of the petition, insofar as they relate to the article in question, the chancellor must direct the registrar to serve on the Council notice in App C Form 9: r 15(1), (2). In any case not within heads (A)-(C) above where the chancellor considers that advice from the Council would be of assistance in relation to a petition for a faculty, the chancellor may direct the registrar to serve on the Council notice in Form 9: r 15(3). Where notice in Form 9 is served under r 15, the registrar must also serve on the Council a copy of the petition and such plans and other relevant documents which were submitted to the Registry under r 4(1) (see supra) as the registrar considers appropriate: r 15(4). The written advice of the Council in response to such a notice must be sent to the registrar as soon as practicable but in any event no later than six weeks from the date of receipt of the notice; if no such advice is received within six weeks (or such longer period as may be granted on request from the Council), the chancellor may proceed to determine the petition without such advice: r 15(5). For the purposes of r 15, 'article' includes not only an ornament or movable object but also an object fixed to land or a building, and a part of any such object: r 15(6).

If the chancellor by whom any proceedings for a faculty are to be heard is of the opinion that by reason of the fact that the registrar has acted for any of the parties or has otherwise been personally connected with the proceedings the registrar ought not to sit as clerk of the court at the hearing, another practising solicitor or diocesan registrar must be appointed by the chancellor to sit as such clerk in place of the registrar: r 30.

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1324. Objection and pleadings.

A petition can be opposed only by a person specially cited or a person having an interest which would entitle him to apply for a faculty¹. Parishioners who do not enter appearance² may be taken to assent to the petition³.

Any person who has entered an appearance must, not more than fourteen days thereafter lodge at the diocesan registry a written statement setting out his objections in detail⁴. Not more than fourteen days after the lodging of the statement the petitioners must lodge an answer, and any subsequent pleading must be lodged not more than seven days after the lodging of the last previous pleading⁵. Any party who objects to the adverse party's pleading or any part of it as being irrelevant, embarrassing or bad in law may, not more than fourteen days after it was lodged, lodge a notice setting out his reasons for objecting to it, and the party whose pleading it is may not more than seven days after the lodging of the notice lodge an amended pleading⁶; if he does not do so the registrar must lay the pleading before the judge, who must either appoint a day to decide as a preliminary issue the matters raised or reserve them for decision on the general hearing of the case⁷.

1 *Hansard v Parishioners and Inhabitants of St Matthew, Bethnal Green* (1878) 4 PD 46 at 54, 55. As to persons interested, see PARA 1319 ante. A person on behalf of the bishop has no locus standi to oppose a petition: *Lee v Fagg* (1874) LR 6 CP 38, PC. Objectors with the same interests may be ordered to be represented by a representative party opponent: *Norfolk County Council v Knights and Caister-on-Sea Joint Burial Committee* [1958] 1 All ER 394n, [1958] 1 WLR 309.

2 As to the entry of appearance, see PARA 1323 ante.

3 *Churchwardens of St John's, Margate v Parishioners etc of St John's, Margate* (1794) 1 Hag Con 198 at 200; *St Magnus-the-Martyr Parochial Church Council v Chancellor of the Diocese of London* [1923] P 38. Supporting or opposing memorials purporting to be signed by petitioners as to which there is no proof of the signatures or evidence of the representations made to those who sign are inadmissible: *Rector and Churchwardens of Capel St Mary, Suffolk v Packard* [1927] P 289; *Re Christ Church, Chislehurst* [1947] 1 All ER 146 at 150, 151, [1973] 1 WLR 1317 at 1321. Memorials had been admitted in *Vicar of Tetbury v Churchwardens and Inhabitants of Tetbury* (1885) [1892] P 271 n. (2) (where it was not disputed that the signatories were parishioner), and in *Vicar and Churchwardens of St Botolph, Aldersgate Without v Parishioners of St Botolph, Aldersgate Without* [1900] P 69 (where by consent memorials were filed on each side), but in *Nickalls v Briscoe* [1892] P 269 the court refused to admit a memorial and intimated that the proper way to express the parishioners' opinion was by resolution of the vestry. As to evidence by affidavit or before an examiner, see PARA 1326 text to note 10 post.

4 Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 5 (5). It must be signed by the objector or his counsel or solicitor: r 5 (10). A copy must first be served on the adverse party or his solicitor, and the copy lodged must be indorsed with the date of service and the name of the person serving it: r 5 (10). For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table 11, Fees 17-21.

5 Faculty Jurisdiction Rules 1967, r 5 (7). Rules 5 (10) (see note 4 supra) applies to any answer or other pleading.

6 *Ibid* r 5 (8). Rule 5 (10) (see note 4 supra) applies to any notice of objection.

7 *Ibid* r 5 (9).

UPDATE

1324 Objections and pleadings

TEXT AND NOTES--1967 Rules replaced: Faculty Jurisdiction Rules 2000, SI 2000/2047.

Any interested person who wishes to object to a proposed faculty being granted for all or some of the works or other proposals must at any time during the period of 28 days display of public notice of the petition required by r 6(4) or such longer period as may be directed under r 6(5)(d) write to the registrar and to the petitioners a letter of objection so as to arrive within the period of 28 days: r 16(1). As to the prescribed form, see App C Form No 3. 'Interested person' in relation to a petition for a faculty means (1) any person who is resident in the ecclesiastical parish concerned and any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but does not reside therein; (2) the archdeacon of the archdeaconry in which the parish concerned is situated; (3) the parochial church council; (4) the local planning authority for the area in which the church or place of worship is situated; (5) any national amenity society; (6) any other body designated by the chancellor for the purpose of the petition; and (7) any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition: r 16(2). Following receipt of a letter of objection from an interested person (whether as to all or some of the works or proposals) the registrar must after the end of the period of display of the public notice inform the objector in writing that he may (a) leave the chancellor to take the letter of objection into account in reaching a decision without the objector becoming a party in the proceedings, in which case a copy of the letter of objection will be sent to the petitioners to allow them to comment on it before the chancellor reaches a decision; or (b) send or deliver to the registrar formal written particulars of objection in App C Form 4 and thereupon become a party in the proceedings: r 16(3). For further provision relating to objections to petitions see r 16(4)-(6).

Where either no letter of objection has been received or, if such letter has been received, no particulars of objection have been submitted within the time allowed, or where the chancellor is satisfied that all the parties concerned consent to the grant of a faculty, the chancellor may, subject to the production of any relevant evidence, and subject to the requirements of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 17 (faculties for the demolition of churches: see PARA 1314), grant the faculty: SI 2000/2047 r 17.

Where particulars of objection have been submitted to the registry the petitioners may, and if ordered to do so must, submit to the registry a written answer thereto within 21 days of the submitting of those particulars and must serve a copy of the answer on each of the other parties: r 18.

As to the giving of directions generally see r 19. As to the giving of leave to amend pleadings, see r 32(5) and PARA 1330.

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1325. Petition treated as application for archdeacon's certificate.

Where a faculty petition is presented by the incumbent and churchwardens and it appears to the registrar or judge that they could more appropriately have applied for an archdeacon's certificate¹ he may, if the petitioners so desire, direct that, on compliance with the specified procedural requirements², the petition is to be treated as an application for an archdeacon's certificate³.

1 As to application for an archdeacon's certificate, see PARA 1331 et seq post.

2 Ie that a notice of intention to apply for an archdeacon's certificate in respect of the works or purposes concerned be given and certified under the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 3 (4), (5), and that the certificate of the incumbent and churchwardens (see Appendix, Form 2) be submitted to the diocesan registrar: r 9; see PARA 1331 post.

3 Ibid r 9.

UPDATE

1325 Petition treated as application for archdeacon's certificate

TEXT AND NOTES--1967 Rules revoked: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047. As to the archdeacon's jurisdiction in certain faculty matters, see PARAS 1331-1334, 1331A.

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1326. Hearing and evidence.

When the pleadings are closed and any issue raised by them remains outstanding, or where the faculty sought is for the total or partial demolition of a church or the disposal of an article of possible historic or artistic interest and application has been made¹ for evidence to be heard in open court from a member of the Council for Places of Worship or some person duly authorised by it², or from any other person (unless, in the judge's opinion, the application or the evidence he gives is frivolous or vexatious³), the registrar must lay all the documents lodged in the registry before the judge, who must appoint a time and place for hearing the case⁴. The registrar must notify the archdeacon and, if it has advised on the case, the diocesan advisory committee⁵ of the time and place so fixed⁶.

Faculty proceedings are heard and disposed of in the consistory court of the diocese concerned⁷ by the diocesan chancellor⁸, although they may be heard and disposed of by the bishop alone or with the chancellor if and insofar as provision in that behalf is made in the letters patent by which the chancellor is appointed⁹.

Unless the judge otherwise orders the evidence at the hearing must be given orally, but he may by order direct that all or any part of the evidence may be given before an examiner appointed by him, or by affidavit¹⁰. He may of his own motion direct the summoning of a member of the diocesan advisory committee or any other person to give evidence if he considers that that person may be able to give relevant evidence and is willing to give it¹¹, but the evidence so given, and any evidence given by a member of the Council for Places of Worship or any person authorised by it¹², is subject to cross-examination by the party or parties concerned¹³.

A person who wishes to appeal from the court's judgement may apply to the chancellor, immediately after judgement is given, for his certificate as to whether a question of doctrine, ritual or ceremonial is involved; this determines to which court the appeal lies¹⁴.

1 The application must be made to the registrar in the prescribed form: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 6 (2), (3), Appendix, Forms 8, 9, 9A (amended by S.I. 1975 No. 135); see Court Forms. If made by a council member or person authorised by the council it must be lodged not more than six weeks after the council receives notice of the petition: r 6 (2) (a), (3) (amended by S.I. 1975 No. 135). If made by any other person it must be lodged not more than four weeks after the gazetting of notice of the petition: r 6 (2) (b). As to these notices, see PARA 1323, text to notes 10-16 ante.

2 See the Faculty Jurisdiction Measure 1964, s 2 (1) (iv) (a), the Faculty Jurisdiction Rules 1967, r 6 (3) (b) (substituted by S.I. 1975 No. 135), and PARA 1321 ante.

3 See the Faculty Jurisdiction Measure 1964, s 2 (1) (iv) (b).

4 Faculty Jurisdiction Rules 1967, r 5 (11). For the meaning of 'judge', see PARA 1321 note 2 ante. The judge has a discretion to order a hearing in open court, even where the petition is unopposed: cf. para 1318 note 11 ante.

5 See PARA 1321 ante.

6 Faculty Jurisdiction Rules 1967, r 5 (12). The judge may require the committee to advise him: see PARA 1321 text and note 2 ante.

7 As to the consistory court's jurisdiction, see PARA 1284 ante.

- 8 Ecclesiastical Jurisdiction Measure 1963, s 46 (1).
- 9 Ibid s 46 (1) proviso: see PARA 1278 ante, 1330 post.
- 10 Faculty Jurisdiction Rules 1967, r 6 (1).
- 11 Ibid r 6 (4) (substituted by S.I. 1975 No. 135).
- 12 Ie under ibid r 6 (2) or (3) (amended by S.I. 1975 No. 135): see note 1 supra.
- 13 Ibid r 6 (6) (substituted by S.I. 1975 No. 135). The registrar must give the parties not less than seven days' written notice that the evidence is to be given, of the witness's name and address and of the nature of the evidence required of him: r 6 (5) (substituted by S.I. 1975 No. 135).
- 14 See PARA 1335 post.

UPDATE

1326 Hearing and evidence

TEXT AND NOTES--1967 Rules replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047. Within the period of 28 days after expiry of the last date of compliance with any directions given under r 19 or, where the case is one to which the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 17(4)(d) (see PARA 1321) applies, the registrar must lay all the documents submitted to the registry before the chancellor who must give directions as to a time and place for the hearing of the case: SI 2000/2047 r 20(1). In addition to notifying the parties the registrar must send to the archdeacon, the Council, the advisory committee, and any other body which has given advice to the chancellor, written notice of the time and place of the hearing: s 20(2).

The evidence at the hearing of any proceedings for a faculty must be given orally save that the chancellor on application by a party or of his own motion may by order direct (1) that all or any part of the evidence may be given before an examiner appointed by him or by affidavit, and (2) that a written statement may be given in evidence without the attendance of the maker of the statement: r 21(1). An application to submit a written statement in evidence at the hearing may be made by or on behalf of any person who is not a party to the proceedings and the chancellor may give leave for a written statement to be admitted in evidence without the attendance of the maker of the statement provided that a copy of the written statement is submitted to the registry and that a copy is delivered by that person to the parties not less than 21 days before the date of the hearing: r 21(2). The chancellor is entitled on receiving a copy of a written statement to require the attendance at the hearing of the maker of the statement for cross-examination by the parties, and if any party on receiving a copy of the statement applies to the chancellor for an order requiring the attendance of the maker of the statement at the hearing for cross-examination, the chancellor can make an order accordingly, and in the event of the failure of the maker of the statement to attend the hearing when required to do so, his written statement must not be admitted in evidence save in exceptional circumstances with the leave of the chancellor: r 21(3). As to applications to give evidence on petitions for partial demolition or demolition, see r 22 App C Forms 10, 11. As to applications by the Council for the Care of Churches to give evidence where it has been served with notice of a petition concerning matters of historic or artistic interest, see r 23 App C Form 10. As to applications by English Heritage to give evidence where it has been specially notified (as to which see PARA 1323), see r 24 App C Form No 10.

The chancellor may direct the attendance of a member of the advisory committee, the Council for the Care of Churches or any other person to give evidence at the hearing of any petition for a faculty if it appears to him that the person directed to attend may be

able to give relevant evidence and is willing to give it: r 25(1). Where any person has applied to give evidence or has been directed to do so in proceedings for a faculty, the registrar must give the parties to the proceedings not less than 14 days' notice in writing that the evidence is to be given and of the name and address of the proposed witness and, in the case of a witness directed to give evidence, the nature of the evidence required of him: r 25(2). Evidence given by any person who has applied to give evidence or has been directed to do so is subject to cross-examination by the parties to the proceedings and any such witness may be permitted to ask questions of the parties with the leave of the chancellor: r 25(3).

As to the disposal of proceedings by written representation, see PARA 1326A.

If the chancellor decides to grant a faculty following either an oral hearing or a determination on the basis of written representations under r 26 (see PARA 1326A) the registrar must issue a faculty in App C Form 5 adapted to meet the circumstances of the case and must issue a certificate in App C Form 6 to be completed in accordance with the requirement in the faculty: r 27.

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1326A. Disposal of proceedings by written representation.

If the chancellor considers it expedient to do so and is satisfied that all the parties to the proceedings have agreed in writing, then the chancellor may order that the proceedings be determined upon consideration of written representations instead of by a hearing in court provided that no such order may be made in any case in which the chancellor is required to hear evidence in open court¹. Where an order has been made by the chancellor under that provision the registrar must give notice (1) that the petitioners must submit to the registry and serve on each of the other parties within 21 days of the direction a written statement in support of their case including the documentary or other evidence upon which they wish to rely; (2) that each of the other parties must not more than 21 days after the submitting of the petitioners' statement submit to the registry and serve on the petitioners a written statement in reply to the petitioners' statement and in support of his case including any documentary or other evidence upon which he wishes to rely; (3) that the petitioners may not more than 14 days after the submitting of the statement of an opposing party submit to the registry and serve on such opposing party a written statement in response². If any party does not comply with any such direction, the chancellor may declare him to be in default and may proceed to dispose of the case without any further reference to such party³. Any party against whom an order declaring him to be in default is made may at any time apply to the court to revoke that order, and the chancellor may as a matter of discretion revoke the order on such terms as to costs or otherwise as may be just⁴. Notwithstanding the existence of an order that the proceedings are to be dealt with by written representations, the chancellor may at any stage revoke the order and direct that the proceedings be determined at an oral hearing and the chancellor must thereupon give directions for the future conduct of the proceedings⁵. The chancellor may, whether or not an application is made to the court by any party, inspect the church or any article or thing the subject of the petition or concerning which any question arises in the proceedings⁶. If no order has been made for the proceedings to be determined by an oral hearing⁷, the chancellor must determine the proceedings upon the pleadings and the written statements and evidence submitted under these provisions, and the chancellor's decision will be as valid and binding on all parties as if it had been made after an oral hearing⁸. The chancellor or the registrar (if so authorised by the chancellor) may give such other directions as appear just and convenient for the expeditious dispatch of proceedings under these provisions⁹.

¹ *Ie* for the purposes of the care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 17(2) or 3(a) by virtue of s 17(4): Faculty Jurisdiction Rules 2000, SI 2000/2047, r 26(1).

² *Ibid* r 26(2).

³ *Ibid* r 26(3).

⁴ *Ibid* r 26(4).

⁵ *Ibid* r 26(5).

⁶ *Ibid* r 26(6).

⁷ *Ie* under *ibid* s 26(5): see TEXT AND NOTE 5.

⁸ *Ibid* r 26(7).

9 Ibid r 26(8).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(iv) Procedure for obtaining Faculties/1327. Issue of faculty.

1327. Issue of faculty.

Where no appearance¹ has been entered or no statement of objections in detail² has been delivered within the time allowed, or it appears that all interested parties³ consent to the grant to the faculty, the judge may grant the faculty sought⁴, subject to the statutory requirements as to faculties for the total or partial demolition of a church⁵ and for the sale of books in a parochial library⁶, and subject to the production of such evidence, if any, as he may require⁷. Where there is a hearing⁸ the judge may at the conclusion grant the faculty sought.

Unless the judge otherwise directs, a faculty authorising works must include a provision requiring the works to be completed within a stated period, requiring their completion to be certified by such persons as he may direct and requiring the certificate to be lodged in the diocesan registry within that period⁹. A faculty may be subject to a condition requiring the work or any part of it to be carried out under the supervision of the archdeacon or any other person nominated by the court¹⁰. The court may direct that in default of the incumbent and churchwardens carrying out the works or any part of them a faculty is to issue to the archdeacon authorising him to carry them out¹¹. It may also order that the archdeacon's costs and expenses be paid by any other party to the proceedings¹². A faculty may, if the judge thinks fit, include a provision that the authorisation shall have effect 'until further order'¹³.

The court may not grant a faculty for the demolition or partial demolition of a church except on specified statutory grounds¹⁴.

1 See PARA 1323 ante.

2 See PARA 1324 ante.

3 As to the persons interested, see PARA 1319 ante.

4 For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table 11, Fees 31-33, 35. For the form of unopposed faculty authorising works or purposes other than the total or partial demolition of a church, see the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 7 (1), Appendix, Form 10, and Court Forms.

5 See the Faculty Jurisdiction Measure 1964, s 2, and PARA 1314 ante. See also the text to note 13 infra.

6 See *ibid* s 4, and PARA 1318 ante.

7 Faculty Jurisdiction Rules 1967, r 5 (6).

8 See PARA 1326 ante.

9 Faculty Jurisdiction Rules 1967, r 7 (2). For the prescribed form of certificate, see r 7 (3), Appendix, Form 11, and Court Forms.

10 Faculty Jurisdiction Measure 1964, s 10 (a). In this case the certificate under the Faculty Jurisdiction Rules 1967, r 7, must also certify that the conditions have been complied with: r 7 (3).

11 Faculty Jurisdiction Measure 1964, s 10 (b).

12 *Ibid* s 10 (c). As to costs, see PARA 1328 post.

13 See PARA 1311 ante.

14 *Ibid* s 2 (1). As to these grounds, see s 2, and PARA 1314 ante.

UPDATE

1327 Issue of faculty

NOTE 4--As to current fees orders, see PARA 1204.

TEXT AND NOTE 7--Now r 5A(4); SI 1987/2266, applying where no notice of objection has been given (see PARA 1323) instead of where no appearance has been entered.

TEXT AND NOTES 10-12--1964 Measure s 10 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. In any proceedings for obtaining a faculty, the court may grant a faculty subject to conditions, including in particular (i) a condition requiring the work, or any part of the work, authorised by it to be carried out under the supervision of the archdeacon or of any person nominated by the court, and (ii) in the case of a faculty authorising the disposal of an article, a condition requiring a specified period to elapse before the disposal takes place: s 12(1). Where the court grants a faculty to a person other than an archdeacon and considers that the work authorised by it should be carried out (whether or not by that person), it may also order that, in default of that person carrying out the work, a faculty will issue to the archdeacon authorising him to carry out the work and, in that event, that the expenses incurred by the archdeacon in carrying out the work be paid by that person: s 12(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(iv) Procedure for obtaining Faculties/1328. Costs.

1328. Costs.

Unless the court otherwise orders¹, applicants for a faculty bear the costs incurred by them to obtain it. The award of costs in a contested case is in the discretion of the court, and although the usual rule is that costs follow the event² the court may, if it considers the opposition to have been reasonable, direct that the parties should be left to bear their own costs³. Where the opposition of a party is partially successful a proportion of his costs may be allowed against the applicants⁴.

If in any faculty proceedings, whether opposed or not, it appears to the court that any party to the proceedings was wholly or partly responsible for the introduction into or removal from a church, churchyard or other consecrated ground of any articles, or for the execution of any works there, without the necessary faculty, it may order the whole or any part of the costs and expenses of and consequent upon the proceedings, including the cost of any works ordered by the court, so far as those costs, costs of works and expenses have been occasioned by the introduction, removal or unlawful execution, to be paid by that party⁵.

If the archdeacon or some other person appointed by the bishop in his place⁶ intervenes in faculty proceedings all costs properly incurred by him or which the court orders him to pay are to be borne by the diocesan board of finance⁷. In any faculty proceedings the court may order the archdeacon's costs and expenses to be paid by any other party⁸.

Any sum payable by virtue of a court⁹ order in or consequent upon faculty proceedings must, if the county court so orders, be recoverable by execution from that court or otherwise as if payable under an order of that court¹⁰.

Provisions relating to orders for costs have already been considered¹¹.

1 As to orders, see the text and note 11 infra.

2 *Re St Peter and St Paul, Leckhampton* [1968] P 495 at 500, [1967] 3 All ER 1057 at 1060.

3 *Vicar of St Sepulchre v Churchwardens of St Sepulchre* (1879) Trist 92 at 102; *Lightfoot v Eastwood and Cross-Stone Inhabitants* (1889) Trist 248 at 266; *Davey v Hinde* [1901] P 95 at 125; *Re St Peter and St Paul, Leckhampton* [1968] P 495, [1967] 3 All ER 1057.

4 *Vicar of Tottenham v Venn* (1874) Trist 20 at 32, 33.

5 Faculty Jurisdiction Measure 1964, s 5 (1); *Re Woldingham Churchyard* [1957] 2 All ER 323, [1957] 1 WLR 811. If the person responsible is not already a party to the proceedings the court may by special citation add him as a further party, even if he resides out of the diocese: Faculty Jurisdiction Measure 1964, s 5 (2); see PARA 1323 note 8 ante.

6 *Ie* under *ibid* s 9 (2): see PARA 1319 ante.

7 *Ibid* s 9 (3). As to the board, see PARAS 517, 518 ante. The board is not, however, liable for costs unless it approved the intervention in writing; if such approval was given any order that the costs of the archdeacon or other appointed person be paid by any other party may be enforced by the board in the name of the archdeacon or appointed person: s 9 (3) proviso.

8 *Ibid* s 10 (c).

9 For the meaning of 'court', see PARA 1321 note 2 ante.

10 Faculty Jurisdiction Measure 1964, s 11.

- 11 See the Ecclesiastical Jurisdiction Measure 1963, ss 60, 61, and PARAS 1300, 1301 ante.

UPDATE

1328 Costs

NOTE 3--See *Re St Catherine's, Leconfield* [1992] 3 All ER 545.

TEXT AND NOTE 5--1964 Measure s 5 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. If in any faculty proceedings it appears to the court that any party to the proceedings was wholly or partly responsible for any act or default in consequence of which the proceedings were instituted, it may order the whole or any part of the costs and expenses of and consequent on the proceedings, including expenses incurred in carrying out any work authorised by the faculty (so far as those costs and expenses have been occasioned by that act or default) to be paid by the person responsible: s 13(1). The court retains the power to add a person responsible as a further party by special citation: s 13(2). A special citation may require the person to whom it is issued to attend the court at a specified time and place: s 13(3). Failure to comply without reasonable excuse with any requirement of a special citation issued by any court is a contempt of the court: s 13(11). The court cannot make an order or issue a special citation unless it is satisfied that the proceedings were instituted less than six years after the act was committed: s 13(7). Where proceedings for obtaining a faculty are instituted by an archdeacon and any fact relevant to the institution of such proceedings has been deliberately concealed from him, the period of six years does not begin to run until the archdeacon has discovered the concealment or could with reasonable diligence have done so: s 13(9). Deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach: s 13(10).

TEXT AND NOTE 7--1964 Measure s 9(3) replaced: 1991 Measure s 16(4), Sch 8. Section 16(4) refers to the archdeacon's power to institute proceedings (see PARA 1319) as well as to intervene in them. In s 16(4) proviso, the board is not liable for costs unless the institution of proceedings or intervention is approved by the bishop in writing after consultation with the board.

TEXT AND NOTE 8--1964 Measure s 10 repealed: 1991 Measure Sch 8 (see PARA 1327).

NOTE 11--1963 Measure s 60 amended: Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 Sch 2 (see PARA 1300).

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1329. Service.

Service of any document in faculty proceedings may be effected by leaving it at the proper address¹ of the person to be served², or by sending it by the recorded delivery service to that address³, or in such other manner as the judge or registrar may direct⁴.

Any document required to be lodged at the diocesan registry may be lodged by delivering it there or by posting it properly addressed to the registrar at the registry⁵.

1 A person's proper address is his usual or last known address or the business address of the solicitor, if any, who is acting for him in the proceedings: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 12 (2).

2 Ibid r 12 (1) (a).

3 Ibid r 12 (1) (b).

4 Ibid r 12 (1) (c).

5 Ibid r 12 (3).

UPDATE

1329 Service

TEXT AND NOTES--1967 Rules r 12 replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047, r 31. Service of any document may be effected (1) by leaving the document at the proper address of the person to be served; or (2) by sending it by post to that address; or (3) by leaving it at a document exchange as provided for in r 31(3); or (4) by fax as provided for in r 31(4); or (5) in such other manner, including electronic means, as the chancellor or registrar may direct: r 31(1). For the purpose of r 31, and of the Interpretation Act 1978 in its application to this rule, the proper address of any person on whom a document is to be served under this rule will be (a) his usual or last known address; or (b) the business address of the solicitor, if any, who is acting for him in the proceedings: SI 2000/2047 r 31(2). Where either the proper address for service includes a numbered box at a document exchange, or there is inscribed on the writing paper of the party on whom the document is served (where such party acts in person) or on the writing paper of his solicitor (where such party acts by solicitor) a document exchange box number, and such a party or his solicitor, as the case may be, has not indicated in writing to the party serving the document that he is unwilling to accept service through a document exchange, service of the document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that document exchange; and any document which is left at a document exchange in accordance with this provision will, unless the contrary is proved, be deemed to have been served on the second business day following the day on which it is left: r 31(3). Service by fax may be effected where (i) the party serving the document acts by a solicitor; (ii) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor; and (iii) the solicitor acting for the party on whom the document is served has

indicated in writing to the solicitor serving the document that he is willing to accept service by fax at a specified fax number and the document is transmitted to that number and for this purpose the inscription of a fax number on the writing paper of a solicitor will be deemed to indicate that such a solicitor is willing to accept service by fax unless he has indicated in writing that he is not prepared to do so: r 31(4). Any document required by SI 2000/2047 to be submitted to the diocesan registry may be delivered at the registry, or sent by post properly addressed to the registrar at the registry: r 31(5).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(iv) Procedure for obtaining Faculties/1330. Time, non-compliance with rules, and forms.

1330. Time, non-compliance with rules, and forms.

Where anything is required¹ in faculty proceedings to be done not more than a specific number of days or weeks after a specified act or event the day on which the act or event occurred is not to be counted². On application by the person concerned the judge or registrar may extend any time limit, even after it has expired³, on such terms as he may think just⁴.

Non-compliance with the Faculty Jurisdiction Rules 1967 does not render any proceedings void unless the judge so directs, but the proceedings may be set aside, wholly or in part, as irregular or may be amended or otherwise dealt with in such manner and upon such terms as the judge thinks fit⁵. Where any of those rules requires a document to be in a prescribed form⁶ and that form is not in all respects appropriate the rules are to be construed as requiring the use of a form of the like character with such variations as circumstances may require⁷. Nothing in the rules prejudices any power or rights reserved to a diocesan bishop by the instrument appointing the diocesan chancellor⁸.

These provisions apply also to proceedings on an application for an archdeacon's certificate⁹.

1 Ibid by the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002.

2 Ibid r 13 (1).

3 Ibid r 13 (2). This power may be exercised on an ex parte application, or the judge or registrar may direct the giving of notice of the application and a hearing: r 13 (3).

4 Ibid r 13 (4).

5 Ibid r 14.

6 For the prescribed forms, see *ibid* Appendix.

7 Ibid r 15.

8 Ibid r 16: see *PARA 1326 ante*.

9 See *PARA 1331 et seq post*.

UPDATE

1330 Time, non-compliance with rules, and forms

TEXT AND NOTES--1967 Rules replaced: see now the Faculty Jurisdiction Rules 2000, SI 2000/2047. Where, in the exercise of the faculty jurisdiction, any procedural question or issue arises, or it is expedient that any procedural direction is given in order that the proceedings may expeditiously and justly be disposed of, and where no provision of SI 2000/2047 appears to the chancellor to be applicable, he must resolve such question or issue, or give such directions as appear to be just and convenient, and in doing so he must be guided, so far as practicable, by the Civil Procedure Rules for the time being in force: SI 2000/2047 r 34. The chancellor may adjourn the hearing of any proceedings or application from time to time on such terms as he considers just: r 35.

TEXT AND NOTES 1-4--1967 Rules r 13 now SI 2000/2047 r 32(1)-(4); for 'judge' read 'chancellor'. The registrar or chancellor may give leave to any party to amend any pleading at any stage in the proceedings on such terms as are just and in the case of an amended petition such further public notice may be directed as the registrar or chancellor considers necessary having regard to the circumstances of the case: r 32(5).

TEXT AND NOTE 5--1967 Rules r 14 now SI 2000/2047 r 33(1); for 'judge' read 'chancellor'. Whenever it appears to the chancellor that it is just and expedient to do so the chancellor may order that a faculty be (1) set aside; or (2) amended, provided that the amendment will not constitute a substantial change in the works or proposals already authorised by the faculty: r 33(2). Minor changes in the implementation of a project in respect of which a faculty has been granted may be made without formal amendment of the faculty itself: *Re All Saints, Ecclesall* (1998) Times, 8 June.

TEXT AND NOTES 6, 7--1967 Rules r 15 Appendix now SI 2000/2047 r 36(1), App C. The chancellor may approve and direct forms to be used where a faculty is sought for exhumation or reservation of a grave space or in relation to any memorial in a churchyard or consecrated burial ground or in any other appropriate case, except where SI 2000/2047 (other than r 4(1): see PARA 1323) requires a document to be in a form set out in App C: r 36(2).

TEXT AND NOTES 8, 9--1967 Rules r 16 not reproduced in SI 2000/2047. Archdeacons now have faculty jurisdiction in certain faculty matters: see PARAS 1331-1334, 1331A.

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(v) Alternative Procedure by Archdeacon's Certificate

1331. Application for archdeacon's certificate.

The alternative procedure by archdeacon's certificate applies in the case of an application by the incumbent and churchwardens of a parish, supported by a resolution of the parochial church council, for authority to carry out (1) repairs to a church not involving substantial structural change nor affecting its external or internal appearance¹; or (2) repairs to its contents not materially affecting their nature or appearance²; or (3) redecoration of a church or its contents³; or (4) any alteration in an existing heating system not involving a substantial change in the church's external or internal appearance⁴.

In any such case the incumbent and churchwardens must give notice of their intention to apply for an archdeacon's certificate authorising the works by affixing a notice⁵ for a continuous period of not less than ten clear days including two Sundays on or near the principal door of such of the churches or places of worship⁶ in the parish as the registrar may direct⁷. The application for the certificate is made by lodging in the diocesan registry (a) a written application⁸; (b) any necessary designs, plans or other documents giving particulars of the proposed works or purposes⁹; (c) if the diocesan advisory committee's advice has been sought¹⁰, its recommendation¹¹ of or its report on the proposals¹²; (d) a copy of the supporting parochial church council resolution¹³; and (e) a copy of the notice of intention to apply, indorsed with a certificate from the incumbent and churchwardens that the notice was duly given in the parish and that opportunity to object was duly given to all having interest¹⁴.

At the discretion of the judge of the court¹⁵ the archdeacon's certificate procedure¹⁶ may be followed with regard to any other application which in his opinion is unlikely to give rise to any controversy or dissatisfaction in the parish concerned and is not of sufficient importance to justify the expense of faculty proceedings¹⁷.

1 Faculty Jurisdiction Measure 1964, s 12 (1) (a).

2 Ibid s 12 (1) (b).

3 Ibid s 12 (1) (c).

4 Ibid s 12 (1) (d). The procedure may also be followed in certain other cases at the judge's discretion: see the text and note 17 infra.

5 For the form of notice, see the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, Appendix, Form 2, and Court Forms.

6 For the meaning of 'place of worship', see PARA 1323 note 5 ante.

7 Faculty Jurisdiction Rules 1967, r 3 (4) (amended by S.I. 1975 No. 135). Such directions must include the parish church or one or more of the parish churches in the parish and, if the application relates to a church or place of worship which is not a parish church, that church or place of worship: r 3 (4) (amended by S.I. 1975 No. 135).

8 Ibid r 3 (1). For the form of application, see Appendix, Form 1, and Court Forms. For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table II, Fee 1.

9 Faculty Jurisdiction Rules 1967, r 3 (2).

10 The procedure on seeking the committee's advice is the same as that followed by an intending petitioner for a faculty: see *ibid* r 10 (1), and PARA 1321 note 3 ante.

11 The recommendation may be indorsed on the designs, plans or other documents and signed by the chairman or secretary of the committee; alternatively the committee may make a separate report to the intending applicants, which may be in the form of a copy of its relevant minutes, similarly signed: *ibid* r 10 (1).

12 *Ibid* r 3 (3).

13 See the Faculty Jurisdiction Measure 1964, s 12 (1).

14 *Ibid* s 12 (1), (2) (ii); Faculty Jurisdiction Rules 1967, r 3 (5). For the form of certificate, see Appendix, Form 3, and Court Forms. As to the notice, see note 5 *supra*.

15 For the meaning of 'court', see PARA 1321 note 2 ante.

16 *Ie* under the Faculty Jurisdiction Measure 1964, s 12.

17 *Ibid* s 12 (7). It appears that an application for an archdeacon's certificate may be made with a view to the exercise of the judge's discretion under s 12 (7): see the Faculty Jurisdiction Rules 1967, r 3 (1). The discretion may also be exercised in cases where the proceedings have been commenced with a petition for a faculty; in such a case recourse would be had to the provisions respecting the interchangeability of the certificate and the faculty procedures: see r 9, and PARA 1325 ante.

UPDATE

1331-1334 [Application for ... archdeacon's certificate]

1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. The chancellor must confer on the archdeacon of every archdeaconry in the diocese such of the jurisdiction of the consistory court in certain faculty matters relating to the archdeaconry as may be prescribed: s 14(1). An archdeacon on whom the jurisdiction is conferred has power to grant a faculty in any unopposed cause of faculty falling to be considered by him: s 14(2). Where he declines to grant a faculty, or he considers that the matter ought to be dealt with as a matter of urgency without reference to the advisory committee (see PARA 1321), or the grant of a faculty is opposed, he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(3). A faculty granted by an archdeacon has effect as if it had been granted by the chancellor: s 14(4). An archdeacon may not (i) order any costs or expenses to be paid by any person, or (ii) issue an injunction or make a restoration order against any person (see PARA 1311A), or (iii) grant an interim faculty pending the final determination of the matter, and where he considers that any question arises as to (i)-(iii) above he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(5).

A pre-existing certificate issued by an archdeacon under the 1964 Measure s 12 continues in force and has effect as if it were a faculty granted by him: 1991 Measure s 14(6).

Before making a final determination in any cause of faculty, an archdeacon must seek the advice of the diocesan advisory committee unless the action proposed relates exclusively to exhumation or the reservation of a grave space: s 15(2).

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1331A. Archdeacon's faculty jurisdiction.

Where a petition for a faculty for any of the works or other proposals specified¹ is unopposed and the advisory committee recommends the works or proposals in question or raises no objection to them, the archdeacon may exercise the jurisdiction of the consistory court of the diocese in respect of every petition for faculty arising in that archdeaconry². If the registrar is satisfied that the subject matter of the petition so falls within the jurisdiction conferred upon an archdeacon the registrar must indorse the petition accordingly and send it to the archdeacon for consideration³. An archdeacon with such jurisdiction must not make a final determination in relation to any petition for faculty without first seeking the advice of the advisory committee in respect of the works or proposals the subject of the petition, provided that where the advisory committee supplied a certificate in the prescribed form⁴ in respect of the same works or proposals not more than 12 months prior to the submitting of the petition the advisory committee may, if appropriate, confirm that they do not wish to alter that certificate⁵. Having decided to grant a faculty the archdeacon must indorse the petition accordingly and must return it to the registrar whereupon the registrar on the expiry of the period for objection⁶ and provided the petition is unopposed must issue (1) the faculty in the prescribed form⁷; and (2) a certificate in the prescribed form⁸ to be completed in accordance with the requirement in the faculty⁹. If any person objects to the grant of a faculty before the archdeacon has determined the matter the registrar must notify the archdeacon who must immediately return the petition to the registrar and if an objection is received after the archdeacon has indorsed the petition¹⁰ the archdeacon's decision will be of no effect and the petition must be referred to the chancellor by the registrar and be dealt with by the chancellor¹¹.

An archdeacon who (a) is the minister of the parish to which the petition relates; or (b) has been personally involved with the petitioners in relation to the subject matter of the petition or otherwise to such an extent that the archdeacon deems it inappropriate to act in the matter, must decline to exercise jurisdiction in relation to the petition for a faculty and must so inform the registrar prior to the allocation of the petition, or if this is not practicable must as soon as possible return the petition and accompanying papers to the registrar who must immediately indorse the petition as one to be dealt with by the chancellor¹². An archdeacon may for any reason decline in advance to exercise jurisdiction in relation to any petition for faculty¹³ and may after referral of a petition falling within the archdeacon's jurisdiction, return the petition to the registrar with a request that the petition or any matter raised in it be referred to the chancellor for decision or advice¹⁴. If an archdeacon becomes aware of any matter for which a faculty is required and considers that the matter (i) needs to be dealt with as a matter of urgency without reference to the advisory committee for advice¹⁵; or (ii) may necessitate the issue of an injunction, the making of a restoration order or the grant of any interim faculty pending the final determination of the matter; or (iii) gives rise to any question as to the payment of costs or expenses, then whether or not a petition has been submitted the archdeacon must inform the registrar who must immediately refer the matter to the chancellor who may give such licence or other directions in respect of the matter on such terms or conditions as are appropriate in the circumstances of the case¹⁶.

On the application of a minister and the majority of the parochial church council an archdeacon may give a licence in writing in the prescribed form¹⁷ for a temporary period not exceeding 15 months for a scheme of minor re-ordering provided the archdeacon is satisfied that (A) the scheme does not involve any interference with the fabric of the church; and (B) it does not involve the fixing of any item to the fabric of the church nor the disposal of any fixture; and (C)

if the scheme involves the moving of any item, the same is to be done by suitably competent or qualified persons and such item will be safeguarded and stored in the church or in such other place as is approved by the archdeacon, and can easily be reinstated¹⁸. The archdeacon may add such other conditions to the licence as may be considered necessary¹⁹. A copy of any such licence must be submitted to the registrar and the secretary to the advisory committee²⁰. The period specified in the licence must not be extended by the archdeacon provided that where a petition for a chancellor's faculty in respect of the scheme is submitted to the registry not later than two months before the expiry of the period the scheme will be deemed to be authorised until the determination of the petition by the chancellor²¹. An archdeacon may for any reason decline to grant such a licence in which event the archdeacon must advise the minister to apply to the chancellor for an interim faculty authorising the scheme²².

1 Ie works or other proposals specified in the Faculty Jurisdiction Rules 2000, SI 2000/2047, App A (not being works falling within r 13(3)).

2 Ie to the extent provided in ibid App C: r 7(1).

3 Ibid r 7(2). Rule 7(2) takes effect subject to r 8 (see TEXT AND NOTES 12-16): r 7(2).

4 Ie ibid Form 1 under r 3(5) (see PARA 1323).

5 Ibid r 7(3).

6 Ie the period specified in ibid r 16 (see PARA 1324).

7 Ie ibid App C Form 5.

8 Ie ibid App C Form 6.

9 Ibid r 7(4).

10 Ie under ibid r 7(4).

11 Ibid r 7(5).

12 Ibid r 8(1).

13 Ie within ibid App A.

14 Ibid r 8(2).

15 Ie in accordance with the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s 15(2).

16 SI 2000/2047 r 8(3).

17 Ie ibid App C Form 7.

18 Ibid r 9(1).

19 Ibid r 9(2).

20 Ibid r 9(3).

21 Ibid r 9(4).

22 Ibid r 9(5).

UPDATE

1331-1334 [Application for ... archdeacon's certificate]

1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. The chancellor must confer on the archdeacon of every archdeaconry in the diocese such of the jurisdiction of the consistory court in certain faculty matters relating to the archdeaconry as may be prescribed: s 14(1). An archdeacon on whom the jurisdiction is conferred has power to grant a faculty in any unopposed cause of faculty falling to be considered by him: s 14(2). Where he declines to grant a faculty, or he considers that the matter ought to be dealt with as a matter of urgency without reference to the advisory committee (see PARA 1321), or the grant of a faculty is opposed, he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(3). A faculty granted by an archdeacon has effect as if it had been granted by the chancellor: s 14(4). An archdeacon may not (i) order any costs or expenses to be paid by any person, or (ii) issue an injunction or make a restoration order against any person (see PARA 1311A), or (iii) grant an interim faculty pending the final determination of the matter, and where he considers that any question arises as to (i)-(iii) above he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(5).

A pre-existing certificate issued by an archdeacon under the 1964 Measure s 12 continues in force and has effect as if it were a faculty granted by him: 1991 Measure s 14(6).

Before making a final determination in any cause of faculty, an archdeacon must seek the advice of the diocesan advisory committee unless the action proposed relates exclusively to exhumation or the reservation of a grave space: s 15(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(v) Alternative Procedure by Archdeacon's Certificate/1332. Reference of application to archdeacon.

1332. Reference of application to archdeacon.

The diocesan registrar must refer any such application as is referred to in the preceding paragraph¹ to the archdeacon of the archdeaconry in which the church is situate² unless (1) the registrar is not satisfied that the application is within the relevant provision³; or (2) the application is not supported by the necessary certificate from the incumbent and churchwardens⁴; or (3) notice of objection to the proposed works is given to the registrar in the prescribed manner⁵ or the time for giving such notice has not expired⁶.

If the registrar is not satisfied that the application is within the relevant provision he must so inform the archdeacon and must refer it to the judge⁷ for his directions by submitting the application and supporting documents with his observations on them, and the judge may, if he also is not so satisfied, either exercise his discretion⁸ and allow the archdeacon's certificate procedure to be followed⁹ or direct that the faculty procedure is required¹⁰.

Notice of objection to the proposed works or purposes may be lodged at the diocesan registry by any person interested¹¹ not more than fourteen days after the notice of intention was first affixed¹², whereupon the registrar, instead of referring the application to the archdeacon, must require the incumbent and churchwardens to apply to the court for a faculty in the ordinary way¹³.

1 There is, it seems, an exception in the case of an application in which the exercise of the judge's discretion is sought under the Faculty Jurisdiction Measure 1964, s 12 (7) (see PARA 1331 note 17 ante). In such a case the judge's directions must first be obtained.

2 Ibid s 12 (1).

3 Ibid s 12 (2) (i). The relevant provision is s 12 (1): see PARA 1331 ante.

4 Ibid s 12 (2) (ii). As to this certificate, see PARA 1331 text and note 14 ante.

5 Ibid s 12 (3).

6 Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 3 (7): see the text to note 12 infra. For the fee, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table II, Fee 2.

7 For the meaning of 'judge', see PARA 1321 note 2 ante.

8 Ie under the Faculty Jurisdiction Measure 1964, s 12 (7): see PARA 1331 ante.

9 Ibid s 12 (2) proviso; Faculty Jurisdiction Rules 1967, r 3 (6).

10 See further ibid r 8 (1), and PARA 1334 post.

11 As to person interested, see PARA 1319 ante.

12 Faculty Jurisdiction Rules 1967, r 3 (7). For the form of notice of objection, see Appendix, Form 4, and Court Forms. As to affixing notice of intention, see PARA 1331 ante.

13 Faculty Jurisdiction Measure 1964, s 12 (3). See further the Faculty Jurisdiction Rules 1967, r 8 (1), and PARA 1334 post.

UPDATE

1331-1334 [Application for ... archdeacon's certificate]

1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. The chancellor must confer on the archdeacon of every archdeaconry in the diocese such of the jurisdiction of the consistory court in certain faculty matters relating to the archdeaconry as may be prescribed: s 14(1). An archdeacon on whom the jurisdiction is conferred has power to grant a faculty in any unopposed cause of faculty falling to be considered by him: s 14(2). Where he declines to grant a faculty, or he considers that the matter ought to be dealt with as a matter of urgency without reference to the advisory committee (see PARA 1321), or the grant of a faculty is opposed, he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(3). A faculty granted by an archdeacon has effect as if it had been granted by the chancellor: s 14(4). An archdeacon may not (i) order any costs or expenses to be paid by any person, or (ii) issue an injunction or make a restoration order against any person (see PARA 1311A), or (iii) grant an interim faculty pending the final determination of the matter, and where he considers that any question arises as to (i)-(iii) above he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(5).

A pre-existing certificate issued by an archdeacon under the 1964 Measure s 12 continues in force and has effect as if it were a faculty granted by him: 1991 Measure s 14(6).

Before making a final determination in any cause of faculty, an archdeacon must seek the advice of the diocesan advisory committee unless the action proposed relates exclusively to exhumation or the reservation of a grave space: s 15(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(v) Alternative Procedure by Archdeacon's Certificate/1333. Issue of archdeacon's certificate.

1333. Issue of archdeacon's certificate.

The archdeacon must consider any application for his certificate referred to him and either (1) with the approval of the diocesan advisory committee, issue a certificate authorising the execution of the proposed work¹, or (2) direct that application be made to the court for a faculty in the ordinary way².

An archdeacon's certificate is a sufficient authority for the execution of the proposed work without a faculty³. The archdeacon must transmit a copy of the certificate to the diocesan registrar, and it must be filed in the diocesan registry⁴.

1 Faculty Jurisdiction Measure 1964, s 12 (4) (a). The committee's approval must be in writing, signed by the chairman or secretary: Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, r 3 (8). Its recommendation of the proposed works or purposes indorsed on the plans etc. under r 10 (1) (see PARA 1331 text to note 12 ante) are sufficient approval: r 3 (8). For the form of archdeacon's certificate, see r 3 (9), Appendix, Form 5, and Court Forms.

2 Faculty Jurisdiction Measure 1964, s 12 (4) (b). See further the Faculty Jurisdiction Rules 1967, r 8 (1), and PARA 1334 post.

3 Faculty Jurisdiction Measure 1964, s 12 (5).

4 Ibid s 12 (6).

UPDATE

1331-1334 [Application for ... archdeacon's certificate]

1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. The chancellor must confer on the archdeacon of every archdeaconry in the diocese such of the jurisdiction of the consistory court in certain faculty matters relating to the archdeaconry as may be prescribed: s 14(1). An archdeacon on whom the jurisdiction is conferred has power to grant a faculty in any unopposed cause of faculty falling to be considered by him: s 14(2). Where he declines to grant a faculty, or he considers that the matter ought to be dealt with as a matter of urgency without reference to the advisory committee (see PARA 1321), or the grant of a faculty is opposed, he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(3). A faculty granted by an archdeacon has effect as if it had been granted by the chancellor: s 14(4). An archdeacon may not (i) order any costs or expenses to be paid by any person, or (ii) issue an injunction or make a restoration order against any person (see PARA 1311A), or (iii) grant an interim faculty pending the final determination of the matter, and where he considers that any question arises as to (i)-(iii) above he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(5).

A pre-existing certificate issued by an archdeacon under the 1964 Measure s 12 continues in force and has effect as if it were a faculty granted by him: 1991 Measure s 14(6).

Before making a final determination in any cause of faculty, an archdeacon must seek the advice of the diocesan advisory committee unless the action proposed relates exclusively to exhumation or the reservation of a grave space: s 15(2).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(v) Alternative Procedure by Archdeacon's Certificate/1334. Refusal of archdeacon's certificate.

1334. Refusal of archdeacon's certificate.

If as a result of directions of the judge¹ or archdeacon² or the giving of a notice of objection³ an application for an archdeacon's certificate is not granted and a faculty is required, the judge or, subject to the judge's directions, the registrar may, if the applicants so desire, direct that the application be treated as a petition for a faculty, whereupon the procedural rules relating to such petitions⁴ apply so far as applicable⁵, save that (1) the judge may direct that the general citation⁶ be dispensed with and that any notice of objection to the application⁷ be treated as entry of appearance to the petition⁸; and (2) if no notice of objection has been given the judge may proceed as in the case of a petition to which no appearance has been entered⁹.

1 See PARA 1332 text to note 10 ante.

2 See PARA 1333 text to note 2 ante.

3 See PARA 1332 text to note 11 ante.

4 I.e. the Faculty Jurisdiction Rules 1967, S.I. 1967 No. 1002, rr 4-7: see PARA 1322 et seq ante.

5 Ibid r 8 (1). For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table II, Fees 5, 6.

6 See the Faculty Jurisdiction Rules 1967, r 5 (1), and PARA 1323 ante.

7 I.e. under ibid r 3 (7): see PARA 1332 ante.

8 Ibid r 8 (1) (a). Where such a direction is given the registrar must notify each person who has given notice of objection of the effect of the direction, telling him that if he wishes to contest the faculty proceedings he must lodge a statement setting out his objections in detail not more than fourteen days after receiving the notification: r 8 (2).

9 Ibid r 8 (1) (b). See further r 5 (6), and PARA 1327 ante.

UPDATE

1331-1334 [Application for ... archdeacon's certificate]

1964 Measure s 12 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8. The chancellor must confer on the archdeacon of every archdeaconry in the diocese such of the jurisdiction of the consistory court in certain faculty matters relating to the archdeaconry as may be prescribed: s 14(1). An archdeacon on whom the jurisdiction is conferred has power to grant a faculty in any unopposed cause of faculty falling to be considered by him: s 14(2). Where he declines to grant a faculty, or he considers that the matter ought to be dealt with as a matter of urgency without reference to the advisory committee (see PARA 1321), or the grant of a faculty is opposed, he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(3). A faculty granted by an archdeacon has effect as if it had been granted by the chancellor: s 14(4). An archdeacon may not (i) order any costs or expenses to be paid by any person, or (ii) issue an injunction or make a restoration order against any person (see PARA 1311A), or (iii) grant an interim faculty pending the final determination of the matter, and where he considers that any question arises as to (i)-

(iii) above he must cause the matter to be referred to the chancellor to be dealt with by him: s 14(5).

A pre-existing certificate issued by an archdeacon under the 1964 Measure s 12 continues in force and has effect as if it were a faculty granted by him: 1991 Measure s 14(6).

Before making a final determination in any cause of faculty, an archdeacon must seek the advice of the diocesan advisory committee unless the action proposed relates exclusively to exhumation or the reservation of a grave space: s 15(2).

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(vi) Appeal and Review

1335. Right of appeal.

Appeal lies, at the instance of any party to the proceedings¹, from judgments, orders or decrees of consistory courts either (1) in faculty causes not involving matter of doctrine, ritual or ceremonial, to the Arches Court of Canterbury or the Chancery Court of York², or (2) in faculty causes involving matter of doctrine, ritual or ceremonial, to the Court of Ecclesiastical Causes Reserved³.

For the purpose of determining whether a question of doctrine, ritual or ceremonial is involved a party desiring to appeal may apply to the diocesan chancellor to certify whether or not such a question is involved⁴; the application may be made immediately after the giving of judgment in the consistory court, in which case the chancellor may determine it forthwith or adjourn it for subsequent determination, either with or without a hearing; or it may be made in writing in the prescribed form, lodged with the registrar, in which case the chancellor may determine it with or without a hearing⁵. After determining the application the chancellor must certify his decision⁶, and his certificate is conclusive⁷.

Further appeal lies from the Arches or Chancery Court to the Judicial Committee of the Privy Council, whilst a finding of the Court of Ecclesiastical Causes Reserved may be reviewed by a Commission of Review⁸.

1 Ecclesiastical Jurisdiction Measure 1963, ss 7 (2) (a), 10 (2). By leave of the court and with the parties' consent additional parishioners may be allowed to intervene in an appeal for the purpose of obtaining a confirmatory faculty in connection with the matters in dispute in the case: *Bradford v Fry* (1878) 4 PD 93 at 102. See also PARA 1337 note 13 post.

2 Ecclesiastical Jurisdiction Measure 1963, s 7 (1) (b). The Arches and Chancery Courts hear appeals from consistory courts in their respective provinces: see PARAS 1285, 1287 ante.

3 *Ibid* s 10 (1). As to this court, see PARAS 1289, 1290 ante.

4 *Ibid* s 10 (3).

5 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251, r 3 (1)-(3). For the prescribed form, see Appendix, Form 1, and Court Forms. Copies must be served on the other parties within fourteen days after judgment was given: Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 3 (1). The registrar must give the parties not less than three days' notice of any hearing: r 3 (4). For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table III, Fees. 1, 2.

6 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 3 (5). The registrar files the original certificate and serves copies on the parties: r 3 (5). For the form of certificate, see Appendix, Form 2, and Court Forms.

7 Ecclesiastical Jurisdiction Measure 1963, s 10 (3).

8 See *ibid* ss 8 (1), 11 (2) (b), and PARA 1339 post. Proceedings by way of appeal or review may be instituted by any party: ss 8 (2), 11 (2) (b).

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1335 Right of appeal

TEXT AND NOTES--A petitioner who has failed to lodge an appeal before the expiry of a time extension granted to him for that purpose, for the lack of a chancellor's certificate for which he has not applied, will not be granted a further extension: *Re St Luke's, Chelsea (No 2)* [1976] Fam 318.

TEXT AND NOTE 1--1963 Measure s 7(2)(a), (b) substituted by Clergy Discipline Measure 2003 Sch 1 para 4(c), distinguishing between disciplinary and non-disciplinary proceedings.

NOTE 1--Leave of the consistory court or, if leave is refused by that court, of the Dean of Arches and Auditor is now required in a civil suit, and appeal also lies from judgments, orders or decrees of the Vicar-General's court (see PARA 633A.2): 1963 Measure s 7(2); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 6; Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 2.

NOTE 3--In any proceedings in the Court of Ecclesiastical Causes Reserved on an appeal from a judgment, order or decree of a consistory court in a cause of faculty, the court, if it considers it has determined the appeal in so far as it relates to matters involving doctrine, etc but that the appeal relates also to other matter, may, if it considers it expedient to do so, deal with the other matter, but otherwise must refer it, and if it considers that no matter of doctrine etc is involved, must refer the appeal (notwithstanding a chancellor's certificate to the contrary), to the Arches or Chancery Court: 1963 Measure s 10(4); 1991 Measure Sch 4 para 7.

TEXT AND NOTES 5, 6--1965 Rules replaced: see now Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713. Any party to faculty proceedings in the consistory court who wishes to appeal against a judgment of the consistory court must first apply for and obtain (1) a certificate from the chancellor under the 1963 Measure s 10(3) stating whether or not a question of doctrine, ritual or ceremonial is involved in the proposed appeal; and (2) leave to appeal to the Arches Court of Canterbury or the Chancery Court of York either from the chancellor, or from the Dean on appeal from a refusal of leave to appeal by the chancellor, in any case where the certificate given under (1) is to the effect that no question of doctrine, ritual or ceremonial is involved: SI 1998/1713 r 4.

As to the application for a certificate see now r 5, and as to the application to the Dean of the Arches and Auditor for leave to appeal see now r 6.

As to fees see now Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009, SI 2009/2105.

TEXT AND NOTE 7--The chancellor's certificate is no longer conclusive: 1963 Measure s 10(3); 1991 Measure Sch 4 para 7.

NOTE 8--1963 Measure s 8(2) amended: Church of England (Miscellaneous Provisions) Measure 2000 s 15.

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1336. Notice of appeal.

An appeal from the judgment of a consistory court in faculty proceedings must be instituted within the prescribed period¹ by (1) lodging with the registrar of the appropriate appellate court² copies³ of the notice of appeal⁴ and chancellor's certificate⁵ and (2) lodging with the diocesan registrar two copies of the notice of appeal and serving one copy on every party⁶. The diocesan registrar files one copy and has the other affixed to or near the principal door of the church concerned⁷, and transmits to the court registrar the record of the proceedings with any documents or exhibits lodged with him or in his custody⁸.

The appellant must apply in writing to the chancellor for a signed copy of any notes he made and of his judgment and must furnish that copy for the court's use, and any other party may apply in writing to the chancellor for another copy⁹.

The rules relating to service, lodgment of documents, time, non-compliance with rules and use of forms which apply in disciplinary proceedings¹⁰ apply also in faculty appeals¹¹.

1 I.e. within twenty-eight days after the consistory court gave judgment or fourteen days after service on the appellant of a copy of the chancellor's certificate (as to which see PARA 1335 ante), whichever period last expires: Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251, r 4 (1). The diocesan registrar may extend the period, even if it has expired: see r 4 (1) proviso.

2 As to the appropriate court, see PARA 1335 ante.

3 I.e. in the case of appeal to the Court of Ecclesiastical Causes Reserved, six copies, and in the case of an appeal to the Court of Arches or Chancery Court of York, two copies: Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 4 (2) (a), (b).

4 The notice must state the grounds of appeal (to which the appellant is limited on the hearing of the appeal, subject to leave of the appellate court: *ibid* r 4 (4)) and, if the appeal relates to part only of the judgment, must specify that part; and it must be in the prescribed form: r 4 (3); see Appendix, Forms 3, 4, and Court Forms. The notice of appeal may be amended under r 5 (b): see PARA 1337 post.

5 *Ibid* r 4 (2) (a), (b). The court registrar files one copy of the notice in the court registry: r 4 (8).

6 *Ibid* r 4 (2) (c). For fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table III, Fees 3-5.

7 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 4 (5) (a).

8 *Ibid* r 4 (5) (b). Any party may, on reasonable notice, inspect and copy the record, documents and exhibits: r 4 (6).

9 *Ibid* r 4 (7).

10 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 58 (2)-(4), 59, 64-66, and PARA 1366 post.

11 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 13 (1), (3).

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1336 Notice of appeal

TEXT AND NOTES--1965 Rules now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713, r 7.

NOTE 6--As to fees see now Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009, SI 2009/2105.

TEXT AND NOTES 10, 11--Replaced: relevant provision now made in SI 1998/1713 rr 20-23.

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1337. Interlocutory proceedings.

Any application¹ made to an appellate court² (otherwise than at the hearing of an appeal or petition) or to a registrar must be in writing, lodged with the registrar³. If a written consent signed by each party or his solicitor is lodged with the application, or if he is otherwise satisfied that the application is unopposed, the registrar may grant any application made to him without a hearing⁴, but in any other case he must fix a hearing, giving the parties not less than three days' written notice of it⁵. Any party may appeal from the diocesan registrar's decision to the chancellor, or from the registrar of any appellate court to that court, by lodging notice of appeal within seven days after the decision, whereupon the registrar will fix a hearing and give the parties not less than three days' written notice of it⁶. Any application or appeal to the Court of Ecclesiastical Causes Reserved or a Commission of Review may be heard by such one of the two judges of that court, other than bishops, as may be agreed between them or, as the case may be, by the presiding judge of the commission⁷. Any interlocutory application may be granted on such terms as the person or body granting it thinks just⁸.

Among the interlocutory applications⁹ which may be made to the diocesan registrar are applications for extension of the time limited for lodging an appeal¹⁰; among those made to the appellate court registrar are applications for postponement of the hearing¹¹; and among those made to the appellate court are applications for a stay of proceedings on the consistory court's judgment¹², for service of the notice of appeal on additional parties¹³, for leave to withdraw the appeal¹⁴ and for leave to amend the notice of appeal¹⁵. The rules relating to the production and inspection of documents and the attendance of witnesses in disciplinary proceedings¹⁶ apply also in faculty appeals¹⁷. The appellate court may at any stage of the proceedings order a party to give security for costs¹⁸.

1 Ie any application under the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251.

2 This includes a Commission of Review (see PARA 1340 post): *ibid* r 11 (1).

3 *Ibid* r 11 (1), (2). For the form of application, see Appendix, Form 6, and Court Forms. For fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table III, Fees 10-12.

4 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 11 (3).

5 *Ibid* r 11 (4).

6 *Ibid* r 11 (6). For the form of notice of appeal, see Appendix, Form 7, and Court Forms.

7 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 11 (7).

8 *Ibid* r 11 (5).

9 The provisions here referred to have a limited application in the case of proceedings before a Commission of Review: see *ibid* r 10, and PARA 1340 post.

10 See *ibid* r 4 (1) proviso, and PARA 1336 ante.

11 See *ibid* r 7 (2), and PARA 1338 post.

12 *Ibid* r 4 (9).

13 A party who was not (but who might have been) a party to the consistory court proceedings may at or before the appeal hearing apply for an order directing that the notice of appeal be served on him and that he be made a party: *ibid* r 6 (1). The court may give and make consequential directions and orders (r. 6 (1)), and the application may be granted on such terms as the court thinks just, including the adjournment or postponement of the hearing (r. 6 (2)).

14 *Ibid* r 5 (a). The court may impose such terms as it thinks just: r 5.

15 *Ibid* r 5 (b). The court may impose such terms as it thinks just, including the adjournment or postponement of the hearing: r 5.

16 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 62, and PARA 1365 post.

17 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 13 (2).

18 Ecclesiastical Jurisdiction Measure 1963, s 60 (1).

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1337 Interlocutory proceedings

TEXT AND NOTES 1-8--1965 Rules replaced: now Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713, r 19. As to provision for holding a hearing for directions see r 11.

NOTE 3--As to fees see now Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009, SI 2009/2105.

NOTE 13--Replaced: now SI 1998/1713 r 10.

NOTES 14, 15--Replaced: now *ibid* r 9.

TEXT AND NOTES 16, 17--Revoked: not reproduced in 1998 Rules.

NOTE 18--1963 Measure s 60(1) amended: Church of England (Legal Aid) Measure 1994 Sch 2 (see PARA 1300). As to security for costs see SI 1998/1713 r 8.

The 1963 Measure s 60 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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1338. Hearing of appeals from consistory courts.

On an appeal from a consistory court the appellate court fixes a time for hearing the appeal which, unless the appellate court otherwise orders, must be not less than twenty-eight days after the lodging of the appeal¹. The registrar must give the parties not less than fourteen days' notice of the court's sittings².

Appeals to the Arches or Chancery Court are heard and disposed of by the Dean of the Arches and Auditor³. Appeals to the Court of Ecclesiastical Causes Reserved are heard by the full court.

The chancellor's note of proceedings and judgment in the consistory court and all relevant documents and exhibits must be available for use at the hearing⁴. The appellate court has full discretionary power, to be exercised only in exceptional circumstances⁵, to receive oral evidence, including evidence from new witnesses⁶. It or, with the parties' consent, any judge or judges of it, may inspect any property or thing concerning which any question arises⁷. Any party proposing to apply to an appellate court to exercise any powers at the hearing must if practicable give written notice to the other parties and to the court registrar⁸.

The appellate court may draw any inferences of fact which might have been drawn in the consistory court proceedings⁹, and may give any judgment or direction which ought to have been given by that court, or may remit the matter with its directions for rehearing and determination by that court¹⁰. It may allow an appeal if the chancellor's exercise of discretion was based on an erroneous evaluation of the facts taken as a whole, and in such a case may substitute its own discretion¹¹.

The appellate court may at its discretion make an order for the payment of taxed costs against any party¹² or may direct that, instead of taxed costs, a person be entitled to a specified proportion of the taxed costs or to the taxed costs from or up to a specified stage of the proceedings or to a specified gross sum in lieu of taxed costs¹³. An order or direction for the payment of costs may be enforced in the county court or, if the amount exceeds the county court's jurisdiction in respect of a contract debt, in the High Court¹⁴.

The court registrar must give the diocesan registrar written notice of any judgment or directions given by the appellate court¹⁵. If a faculty is refused by the consistory court and an appeal is allowed by the appellate court, the appellate court may remit the matter to the consistory court so that it may issue the faculty¹⁶; alternatively, where the appellate court is the Court of Arches or the Chancery Court, it seems that the faculty may issue direct from that court¹⁷.

1 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251, r 7 (1). Any party may apply to the registrar for a postponement (r. 7 (2)), and the court may at any time itself postpone the hearing (r. 7 (3)).

2 Ibid r 7 (4). For the fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table III, Fees 6, 7.

3 Ecclesiastical Jurisdiction Measure 1963, s 47 (1). Appeals from disciplinary proceedings under s 6 (1) (a) are, however, heard and disposed of by all the judges of the court: s 47 (1); see PARA 1370 post. As to the Dean of the Arches and Auditor, see PARA 1286 ante. As to a deputy sitting, see s 4 (1), and PARA 1286 ante.

4 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 8 (1) (a). If no chancellor's note is produced the court may receive any other evidence or statement of what occurred in the consistory court: r 8 (1) (c).

Evidence given in that court by affidavit or deposition may be proved at the appeal by producing copies: r 8 (1) (b).

5 This means, normally, that the evidence could not reasonably have been adduced in the lower court: *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269.

6 See the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 8 (1) (d); cf. *Re St Anselm, Pinner* [1901] P 202 at 211. Once the court of final appeal has given its decision the case cannot be reopened if fresh facts are adduced: *Bradford v Fry* (1878) 4 PD 93 at 111, 112.

7 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 8 (2).

8 *Ibid* r 12. This is without prejudice to the exercise of those powers without notice: r 12.

9 *Ibid* r 8 (3). It was held in *Re St Edburga's, Abberton* [1962] P 10, [1961] 2 All ER 429, an appeal heard under rules which provided (as the present rules do not) that appeals are by way of rehearing that the court's attitude on hearing an appeal should correspond with that adopted by the Court of Appeal as set out in *Benmax v Austin Motor Co Ltd* [1955] AC 370, [1955] 1 All ER 326, HL.

10 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 8 (4). If any party has been added by the appellate court this power is exercisable as if he had been a party to the consistory court proceedings: r 8 (5).

11 *Re St Edburga's, Abberton* [1962] P 10, [1961] 2 All ER 429; *Re St Gregory's, Tredington* [1972] Fam 236, [1971] 3 All ER 269; *Re St Helen's, Brant Broughton* [1974] Fam 16, [1973] 3 All ER 386.

12 Ecclesiastical Jurisdiction Measure 1963, s 60 (2). 'Taxed costs' means costs taxed by a registrar in the prescribed manner, and 'costs' includes fees, charges, disbursements, expenses and remuneration: s 60 (4). It is thought that the procedure for the taxation of costs would be similar to that prescribed by the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 53-56 (see PARAS 1300, 1301 ante), although the relevant provisions of those rules have not been specifically applied to civil proceedings in ecclesiastical courts.

13 Ecclesiastical Jurisdiction Measure 1963, s 60 (3).

14 See *ibid* s 61 (1). In such enforcement proceedings the diocesan or provincial registrar's certificate as to the award or direction for payment of costs is conclusive evidence of the facts certified: s 61 (2).

15 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 8 (6).

16 *Re St James the Great, Buxton, Vicar of St John the Baptist, Buxton v Parishioners of St John the Baptist, Buxton* [1907] P 368 at 381. On such remission a party aggrieved by a condition proposed to be inserted in the faculty may appeal to the appellate court by way of the assertion of a grievance, and that court may hear the appeal without retaining the cause: *Rector and Churchwardens of Chapel St Mary, Suffolk v Packard* [1928] P 69.

17 See *Keet v Smith* (1876) 1 PD 73 at 80, PC; *Bradford v Fry* (1878) 4 PD 93 at 111; and see *Re St Anselm, Pinner* [1901] P 202 at 203.

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1338 Hearing of appeals from consistory courts

TEXT AND NOTES 1-8--1965 Rules replaced: now Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713, rr 12-16. As to provision for holding a hearing for directions see r 11.

The Council for the Care of Churches or some other body concerned with conservation matters may in exceptional circumstances be given leave to give evidence to the appellate court, whether or not it was informed of or cited in the consistory court: r 14.

NOTE 2--As to current fees orders, see PARA 1204.

TEXT AND NOTE 3--1963 Measure s 47(1) substituted: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 8 (see PARA 1285).

The 1963 Measure s 47 applies only to proceedings under that Measure: s 47(1) amended by the Clergy Discipline Measure 2003 Sch 1 para 6(a).

TEXT AND NOTES 9-11--See *Re St Michael and All Angels, Great Torrington* [1985] Fam 81, [1985] 1 All ER 993, Court of Ecclesiastical Causes Reserved, followed in *Re St Stephen, Walbrook* [1987] 2 All ER 578.

TEXT AND NOTES 12-14--1963 Measure ss 60, 61 apply, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

NOTE 12--1963 Measure s 60(2) amended: Church of England (Legal Aid) Measure 1994 (see PARA 1300). In relation to costs incurred by any person to whom legal aid granted under the 1994 Measure, 'taxed costs' means costs taxed or assessed in accordance with rules made under *ibid* s 4 (see PARA 1305): 1963 Measure s 60(4); 1994 Measure Sch 2. As to appeals against an order for payment of taxed costs see 1963 Measure s 60(5), (6); Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 9 and PARA 1300.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(vi) Appeal and Review/1339. Appeal from Arches or Chancery Court.

1339. Appeal from Arches or Chancery Court.

An appeal lies to the Judicial Committee of the Privy Council¹, at the instance of any party², from the judgment of the Court of Arches or Chancery Court of York in faculty proceedings³.

It is instituted by leaving at the Privy Council registry either a petition of appeal and copy of the provincial court's judgment or an instrument of appeal⁴. Within a month from the date when the petition is referred to the Privy Council the appellant's solicitor must, on pain of dismissal of the appeal, apply to the Privy Council registrar for the issue of an inhibition and citation, calling upon the other party to enter an appearance, and a monition for process, requiring the provincial court to transmit the record to the Privy Council⁵. Both documents are served on the registrar of the provincial court and the inhibition and citation is served on the other party⁶. The respondent's solicitor may enter an appearance⁷, and if he wishes to adhere to the appeal he must, within a month from the entry of appearance, file a declaration of adhesion, stating from what part of the judgment he wishes to appeal⁸.

Within a month from the process being brought in the appellant's solicitor must bring into the registry sixty copies of the appendix and deliver forty copies to the respondent's solicitor⁹ and within a month after that both he and the respondent's solicitor must bring in sixty copies of their respective cases and deliver forty copies to the other party's solicitor¹⁰. When the time allowed for bringing in the cases has expired the appeal will stand for hearing¹¹.

The appellant may abandon the appeal by filing a proxy of abandonment, consenting to be condemned in costs, whereupon the appeal will stand dismissed¹². When an appeal stands dismissed the appellant stands condemned in costs unless there is a special agreement to the contrary¹³, but either solicitor may within a fortnight after an appeal stands dismissed file a notice of motion to have it reinstated¹⁴. If on the final hearing the Judicial Committee orders the cause to be remitted the registrar, on the application of either party, must issue a remission¹⁵.

On good cause shown the registrar may extend any of the above time limits¹⁶.

1 As to the Judicial Committee of the Privy Council, see PARA 1288 ante, and COURTS vol 10 (Reissue) PARA 401 et seq.

2 Ecclesiastical Jurisdiction Measure 1963, s 8 (2).

3 Ibid s 8 (1); Judicial Committee Act 1833, s 3; Order in Council making continuing Order directing that all Appeals to Her Majesty in Council shall be referred to the Judicial Committee 1909, S.R. & O. 1909 No. 1228.

4 Rules for Appeals in Ecclesiastical and Maritime Causes, r 3, contained in the Order in Council dated 11th December 1865 establishing Rules for Appeals in Ecclesiastical and Maritime Causes. A petition is used if the appeal is apud acta (ie if the appellant gives notice to the provincial registrar that he appeals); an instrument of appeal is used if the appeal is in scriptis (ie if the instrument is attested by a notary public and two witnesses, as eg in *Rector and Churchwardens of St Nicholas Acons v LCC* [1928] AC 469, PC). For forms, see Rules for Appeals in Ecclesiastical and Maritime Causes, Schedule, and Court Forms.

5 Rules for Appeals in Ecclesiastical and Maritime Causes, rr 4, 5.

6 Ibid r 6. Within a month from the issue of the documents the appellant's solicitor must return them, duly served, with the process, into the registry, on pain of the appeal being dismissed: r 7.

7 Ibid r 8.

8 Ibid r 9.

9 Ibid rr 10, 28. The appendix contains a certified copy of all material documents filed in the court below and an index: r 11. If it is not brought in the appeal will stand dismissed: r 10.

10 Ibid rr 12, 13, 28. If the appellant's solicitor does not do so the appeal will stand dismissed (r. 12); if the respondent's solicitor does not do so the appellant may proceed with his appeal (r. 13).

11 Ibid r 14. If no appearance has been entered four months must, however, have elapsed since the petition was brought in: r 14.

12 See ibid r 17.

13 Ibid r 19.

14 Ibid r 20. If no notice of motion is so given the registrar may, on the application of either solicitor, issue a relaxation of the inhibition: r 21.

15 Ibid r 22.

16 Ibid r 18.

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1339 Appeal from Arches or Chancery Court

TEXT AND NOTES--Appeal lies to Her Majesty in Council in faculty proceedings not involving matters of doctrine, ritual or ceremonial: see now Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713, rr 25, 26.

TEXT AND NOTE 2--Appeal now lies with the leave of Her Majesty in Council: 1963 Measure s 8(2) (amended by the Church of England (Miscellaneous Provisions) Measure 2000 s 15).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(vi) Appeal and Review/1340. Review of decision of Court of Ecclesiastical Causes Reserved.

1340. Review of decision of Court of Ecclesiastical Causes Reserved.

Where in any faculty cause involving matter of doctrine, ritual or ceremonial any party desires that a finding of the Court of Ecclesiastical Causes Reserved should be reviewed by a Commission of Review he may, within twenty-eight days after the finding, lodge a petition for review¹ by (1) lodging with the Clerk of the Crown in Chancery six copies of the petition and chancellor's certificate²; (2) lodging a copy petition with the registrar of the court below and another copy with the diocesan registrar³; and (3) serving a copy petition on every party⁴.

A commission is then directed under the Great Seal to such five persons as the Queen may nominate, of whom three are lords of appeal⁵ who declare that they are communicants and two are lords spiritual sitting as Lords of Parliament, and these five persons constitute the Commission of Review⁶. The Clerk of the Crown in Chancery appoints a registrar of the commission, who takes the six copies of the petition and files one of them⁷; and the registrar of the court below transmits to the registrar of the commission the record and any documents or exhibits, which any party may, on reasonable notice, inspect and copy⁸. The petitioner must apply in writing to the presiding judge of the court below for a signed copy of any note he made of the proceedings and findings, and must furnish that copy for the commission's use⁹.

There is a panel of advisers appointed jointly by the Upper Houses of the Convocations of Canterbury and York to give assistance to any Commission of Review on questions of doctrine¹⁰, and if the finding before the commission involves a question of doctrine the commission must request five persons selected by it from this panel to sit with it as advisers and give such assistance on the matters of doctrine involved as it may require¹¹. The registrar of the commission must notify the parties of the names of the commission and any advisers so selected¹².

On the petitioner's application the commission may stay proceedings on the judgment or finding of either court below¹³. Subject to such modifications as may be necessary, the same rules as to withdrawal and amendment¹⁴, date of hearing¹⁵, proceedings before the court¹⁶ and interlocutory proceedings¹⁷ apply in relation to a review as apply in relation to appeals to the Court of Ecclesiastical Causes Reserved¹⁸. Any party proposing to apply to the commission to exercise any powers at the hearing must if practicable give written notice to the other parties and to the registrar of the commission¹⁹.

The commission is not bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial²⁰, but a decision of a previous Commission of Review binds it on a matter within its jurisdiction except in regard to a matter on which new information or evidence is adduced which was not before the commission on the previous occasion²¹. The commission's decision is a majority decision, each member stating his own opinion on the question under review²².

1 Ecclesiastical Jurisdiction Measure 1963, s 11 (2) (b), (3); Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, S.I. 1965 No. 251, r 9 (1). The registrar of that court may extend the time limit on application made to him within it or after its expiration: r 9 (1) proviso. The petition states the grounds (to which the applicant is limited on the review, subject to leave of the commission: r 9 (4)) and, if it relates to only part of the finding, specifies that part: r 9 (3). For the prescribed form, see Appendix, Form 5, and Court Forms. The petition may be amended under the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 5 (b), applied by r 10. For fees, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table III, Fees 8, 9.

- 2 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 9 (2) (a). As to the chancellor's certificate, see PARA 1335 ante.
- 3 Ibid r 9 (2) (b).
- 4 Ibid r 9 (2) (c).
- 5 For the meaning of 'lords of appeal', see the Appellate Jurisdiction Act 1876, s 5, and COURTS vol 10 (Reissue) PARA 369.
- 6 Ecclesiastical Jurisdiction Measure 1963, s 11 (4), (5): see PARA 1292 ante.
- 7 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 9 (5).
- 8 Ibid r 9 (6).
- 9 Ibid r 9 (7). Any other party may apply to the presiding judge for a signed copy of his note: r 9 (7).
- 10 See the Ecclesiastical Jurisdiction Measure 1963, s 48 (2). The panel comprises members of either of those Upper Houses and also, if thought fit, other theologians: s 48 (2); see PARA 1292 ante.
- 11 Ibid s 48 (3).
- 12 Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, r 9 (8).
- 13 Ibid r 9 (9).
- 14 See ibid r 5, and PARA 1337 ante.
- 15 See ibid r 7, and PARA 1338 ante.
- 16 See ibid r 8, and PARA 1338 ante. Rule 8 (1), however, applies to a review as if the references to notes, affidavits, depositions and other evidence included also references to the notes, evidence etc. in the Court of Ecclesiastical Causes Reserved: r 10.
- 17 See ibid r 11, and PARA 1337 ante.
- 18 Ibid rr 10, 11 (1). See also r 13 (1), (3), and PARA 1336 ante.
- 19 Ibid r 12. This is without prejudice to the exercise of those powers without notice: r 12.
- 20 Ecclesiastical Jurisdiction Measure 1963, s 48 (5).
- 21 Ibid r 48 (6); see also *Ridsdale v Clifton* (1877) 2 PD 276 at 305-307, PC; *Read v Bishop of Lincoln* [1892] AC 644, PC. The modification by the House of Lords of its former rigid rule of precedent (see *Note* [1966] 3 All ER 77, [1966] 1 WLR 1234, HL) does not affect this provision. As to the binding force of precedent in ecclesiastical jurisdiction generally, see PARA 1271 ante.
- 22 Ecclesiastical Jurisdiction Measure 1963, s 48 (4).

UPDATE

1335-1340 Appeal and Review

Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, SI 1965/251 now replaced by Faculty Jurisdiction (Appeals) Rules 1998, SI 1998/1713.

1340 Review of decision of Court of Ecclesiastical Causes Reserved

NOTE 1--As to fees see now Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009, SI 2009/2105.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(4) PROCEEDINGS RELATING TO FACULTIES/(vi) Appeal and Review/1341. Enforcement of the law relating to faculties.

1341. Enforcement of the law relating to faculties.

The effect of a faculty is to authorise, rather than to command, a person to do something¹; strictly speaking, therefore, it is inappropriate to speak in terms of disobedience to a faculty. Cases may arise, however, in which the law relating to faculties is contravened, deliberately or otherwise, for example by unauthorised action in disregard of the requirement of a faculty or by failure to observe the terms of a faculty.

In certain circumstances a person responsible for such a contravention might, if in holy orders, be guilty of an ecclesiastical offence for which he could be censured by monition². Normally, however, it seems that the court would have recourse to the provisions enabling it to order the payment of costs and expenses by a party responsible for a breach of the law³ and to authorise the archdeacon, in appropriate cases, to give effect to the court's decision⁴. In some cases proceedings for contempt of court might be instituted in the High Court⁵.

1 *Re St Mary, Tyne Dock (No. 2)* [1958] P 156 at 166, [1958] 1 All ER 1 at 6.

2 *St Pancras Vestry v Vicar and Churchwardens of St Martin's-in-the-Fields* (1860) 6 Jur NS 540; *Lee v Vicar and Churchwardens of Herne* (1892) Trist 217. As to monition, see PARA 1382 post.

3 See the Faculty Jurisdiction Measure 1964, ss 5, 11, and PARA 1328 ante.

4 See *ibid* s 10, and PARA 1327 ante. Thus in the case eg of a faculty for the removal of an illegal ornament the court might direct that, in default of the incumbent and churchwardens carrying out the removal, a faculty is to issue to the archdeacon authorising him to do so: see s 10 (b).

5 See the Ecclesiastical Jurisdiction Measure 1963, s 81 (2), (3), and PARA 1299 ante. It has been held that deviations from the terms of a faculty constitute a contempt of court but that, if innocent, they may be condoned on payment of the costs of proceedings to rectify them: *Lee v Vicar and Churchwardens of Herne* (1892) Trist 217.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(i) Matters within the Jurisdiction/1342. Matters relating to advowsons.

(5) OTHER CIVIL PROCEEDINGS

(i) Matters within the Jurisdiction

1342. Matters relating to advowsons.

A number of matters relating to advowsons¹ are within the jurisdiction of ecclesiastical courts².

The right of a bishop to refuse to institute or admit a presentee to a benefice on any ground of unfitness or disqualification except a ground of doctrine or ritual is triable by a court constituted under the Benefices Act 1898 consisting of an archbishop and a judge of the Supreme Court³.

Jurisdiction in suits of duplex querela⁴ is exercisable by the Court of Ecclesiastical Causes Reserved⁵, and in proceedings upon a jus patronatus awarded by a diocesan bishop⁶ it is exercisable by the consistory court of his diocese⁷.

1 For the meaning of 'advowson', see PARA 776 ante.

2 One of the specific remedies for disturbance of rights of patronage, namely an action in the nature of quare impedit, is available only in the High Court: see PARA 822 ante.

3 See PARA 821 ante. For the court's constitution, see PARA 1273 ante; and as to its procedure, see PARA 1345 post.

4 As to suits of duplex querela, see PARAS 820, 823 ante.

5 Ecclesiastical Jurisdiction Measure 1963, s 10 (1) (b): see PARA 1290 ante. As to the procedure, see PARA 1346 post. Provision is made for the review of the court's findings by a Commission of Review: see PARA 1292 ante.

6 As to jus patronatus, see PARAS 820, 824 ante.

7 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (c): see PARA 1284 ante. As to the procedure, see PARA 1347 post. No provision appears to have been made for any appeal or review.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(i) Matters within the Jurisdiction/1343. Matters relating to penalties and forfeitures.

1343. Matters relating to penalties and forfeitures.

A consistory court has jurisdiction in proceedings under the Pluralities Act 1838 for the recovery of any penalty or forfeiture incurred by a beneficed clergyman for breach of the duty of residence on his benefice¹ or for farming more than the permitted quantity of land², and in proceedings under that Act³ for the enforcement of a monition by means of sequestration⁴.

1 See the Pluralities Act 1838, s 32, and PARA 692 ante.

2 See *ibid* s 28, and PARA 682 ante.

3 See *ibid* s 112.

4 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2. As to the procedure, see PARA 1348 post. Appeal lies to the Arches Court of Canterbury or the Chancery Court of York: see PARA 1287 ante. The consistory court also has jurisdiction in disciplinary proceedings for offences under the Pluralities Act 1838, s 29, which imposes restrictions as to trading by spiritual persons beneficed or performing ecclesiastical duties (see PARA 683 ante, 1360 post): Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d).

UPDATE

1343 Matters relating to penalties and forfeitures

NOTE 4--1838 Act s 29 repealed and 1963 Measure s 6(1)(d) amended accordingly: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(i) Matters within the Jurisdiction/1344. Matters within the residuary jurisdiction of consistory courts.

1344. Matters within the residuary jurisdiction of consistory courts.

In addition to the jurisdiction already mentioned¹, a consistory court has jurisdiction in any other proceedings which it had power to hear and determine immediately before 31st July 1963² with the exception of those proceedings in respect of which its jurisdiction has been expressly abolished by the Ecclesiastical Jurisdiction Measure 1963³.

¹ See PARAS 1284, 1342, 1343 ante.

² I.e. the date on which the Ecclesiastical Jurisdiction Measure 1963 was passed. The third edition of this work (in which the law stated was in general that in force on 1st October 1955) contained a statement to the effect that in some cases civil rights in connection with ecclesiastical property or with the recovery of money applicable to ecclesiastical purposes could be tried and decided in the ecclesiastical courts, although such proceedings were uncommon, and reference was made to *Butt v Jones* (1829) 2 Hagg Ecc 417; *Linnell and Walker v Gunn* (1867) LR 1 A & E 363; *Liddell v Rainsford* (1868) 38 LJ Eccl 15; *Proud v Price* (1893) 63 LJQB 61 at 64-66, CA, per Lord Esher MR. For the procedure, see PARA 1349 post.

³ Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (e). The following jurisdiction of consistory courts has been expressly abolished by s 82 (2) (c), namely its jurisdiction to hear and determine proceedings for the recovery of tithe (see PARA 1209 ante) or against lay officers of a church (see PARA 547 note 4, and PARA 1266 note 11 ante) or by way of suit for perturbation of seat (see PARAS 555, 1088 ante, and see Phillimore, *Ecclesiastical Law* (2nd Edn) 1436).

UPDATE

1344 Matters within the residuary jurisdiction of consistory courts

NOTE 3--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(ii) Procedure/1345. Cases under the Benefices Act 1898.

(ii) Procedure

1345. Cases under the Benefices Act 1898.

A person presenting or a presentee may within one month after a refusal by a bishop to institute or admit a person to a benefice has been signified to him in the prescribed manner, with its grounds, require that the matter be heard by the court¹, and the bishop must be made a party to the proceedings².

The court is a court of record, and is held in public³. It has the same powers as the High Court of administering oaths, of requiring the attendance of witnesses and the production of documents and as to the payment and recovery of costs⁴.

The judge decides all questions of law and finds as to any fact alleged as reason of unfitness or disqualification, and his decision and finding in these respects are binding on the archbishop; the archbishop directs institution or admission if the judge finds that no such fact sufficient in law exists, or, if the judge finds that any such fact exists, decides, if necessary, whether by reason of it the presentee is unfit for the discharge of the duties of the benefice, and determines whether institution or admission ought, in the circumstances, to be refused; and in either case gives judgment accordingly, which is final⁵.

1 As to the constitution of the court, see PARAS 1273, 1342 ante. For the procedure, see the Benefices Rules 1899, S.R. & O. 1899 No. 141; Benefices Rules 1926, S.R. & O. 1926 No. 357 (amended by S.R. & O. 1933 No. 1148). The only reported decision of the court constituted under the Act is *Rice v Bishop of Oxford* [1917] P 181.

2 Benefices Act 1898, s 3 (1).

3 Ibid s 3 (1). The fees in respect of proceedings in the court are paid over to the general fund of the Church Commissioners (as to which see PARA 1234 ante) who, out of that fund, defray the expenses of and incidental to the sittings of the court, the remuneration of its officers and the necessary expenses of the proceedings: s 11; Benefices (Ecclesiastical Duties) Measure 1926, s 19, Sch. 3.

4 Benefices Act 1898, s 3 (3).

5 Ibid s 3 (2). Where in cases to which s 3 applies the bishop signifies his refusal in the matter there directed, no proceeding in the nature of quare impedit or duplex querela can be taken in any other court in respect of the refusal: s 3 (5). The archbishop's official principal institutes or admits if the bishop fails to do so after judgment in that behalf: s 3 (4).

UPDATE

1345 Cases under the Benefices Act 1898

TEXT AND NOTES 1, 2--Now instead of requiring that the matter be heard by the court and making the bishop a party to the proceedings, an appeal may be made to the archbishop and the Dean of the Arches and Auditor who must decide whether to uphold the bishop's refusal or direct him to institute or admit the presentee: s 3(1); Patronage (Benefices) Measure 1986 s 18(1)(a).

The 1926 Rules are revoked: Patronage (Benefices) Rules 1987, SI 1987/773, r 16.

The Benefices (Institution Appeals) Rules 1988, SI 1988/1996 replace the Benefices Rules 1899, SR & O 1899/141, and provide for appeals against a refusal by a bishop to institute a presentee to a benefice.

TEXT AND NOTE 3--Section 3(1) replaced by s 3(2); 1986 Measure s 18(1)(b), providing that any proceedings on an appeal must be held in public and any party to such proceedings is entitled to appear by counsel or a solicitor.

Section 11 substituted by *ibid* s 18(2); see PARA 1273.

TEXT AND NOTES 4, 5--Section 3(2), (3) are substituted by s 3(2); *ibid* s 18(1)(b), TEXT AND NOTE 3.

NOTE 5--Section 3(4) now refers to 'a decision of the archbishop and Dean' instead of 'judgment': *ibid* s 18(1)(c).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(ii) Procedure/1346. Duplex querela.

1346. Duplex querela.

A suit of duplex querela¹ is brought in the Court of Ecclesiastical Causes Reserved² by the presentee against the bishop, and if another clergyman has also been presented he is made a co-defendant³. In the absence of new rules of procedure⁴ the old procedure⁵ must be followed. The proceedings should be by plea and proof, with evidence given orally⁶. The written charge or libel is exhibited by the plaintiff, and a copy is given to the defendant when he appears on citation. The defendant is obliged to answer to the libel by making his 'allegation'. The court may admit or reject the pleadings in whole or in part, and the suit is heard upon the pleadings as admitted, the facts alleged being proved by witnesses⁷. Appeal lies to a Commission of Review⁸.

1 See PARAS 823, 1342 ante.

2 As to the Court of Ecclesiastical Causes Reserved, see PARAS 1289, 1290 ante.

3 See PARA 823 text to note 5 ante. However, a suit cannot be brought after another clergyman has been inducted to the benefice: see PARA 823 text to note 6 ante.

4 The rules made under the Ecclesiastical Jurisdiction Measure 1963, s 65.

5 Cf. para 1349 post.

6 *Willis v Bishop of Oxford* (1877) 2 PD 192.

7 See Phillimore, Ecclesiastical Law (2nd Edn) 328-332, 990, 991.

8 See PARA 1292 ante. For the procedure on appeal, cf. para 1340 ante.

UPDATE

1346 Duplex querela

NOTE 4--1963 Measure s 65 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8 (see PARA 1296A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(ii) Procedure/1347. Jus patronatus.

1347. Jus patronatus.

Proceedings upon a jus patronatus¹ may be instituted by the bishop in the consistory court² at the request of either of the parties claiming to be patrons or either of the clergymen presented by them³. In the absence of new rules of procedure⁴, the old procedure must be followed⁵, subject to such modifications as may be necessitated by provisions of the Ecclesiastical Jurisdiction Measure 1963⁶.

There is, it seems, no right of appeal against the decision of the consistory court.

1 See PARAS 824, 1342 ante.

2 See PARAS 1284 ante.

3 See PARA 824 ante.

4 The rules made under the Ecclesiastical Jurisdiction Measure 1963, s 65; see also s 46 (2), and note 6 infra.

5 Ibid s 65 (4).

6 Under the old procedure a jury of six clergymen and six laymen was empanelled and required to give a verdict upon the issues (see Phillimore, Ecclesiastical Law (2nd Edn) 334-338), but it seems that the jurisdiction is now to be exercised by the chancellor sitting alone: see the Ecclesiastical Jurisdiction 1963, s 46 (1). The bishop is apparently not bound to admit and institute the person whose right is established by the court's decision, but he would normally be expected to do so, and would thereby avoid being a disturber, even if the unsuccessful patron should recover in a quare impedit or other action: see Phillimore, Ecclesiastical Law (2nd Edn) 336-338.

UPDATE

1347 Jus patronatus

NOTE 4--1963 Measure s 65 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8 (see PARA 1296A). 1963 Measure s 46(2) amended: Clergy Discipline Measure 2003 Sch 2.

NOTE 6--1963 Measure s 46(1) amended: Clergy Discipline Measure 2003 Sch 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(ii) Procedure/1348. Cases under the Pluralities Act 1838.

1348. Cases under the Pluralities Act 1838.

Any penalty or forfeiture incurred by a beneficed clergyman under the Pluralities Act 1838 for breach of the duty of residence¹ or for unlawful farming² is recoverable³ in the consistory court of the diocese⁴ by a person authorised by the bishop, and payment may be enforced by monition and sequestration⁵. Where, in proceedings under the Pluralities Act 1838 which are directed to be by monition and sequestration, the bishop has issued a monition it is to be returned, immediately after service, into the consistory court, and that court has jurisdiction to enforce it by the issue of sequestration⁶.

Any proceedings under the foregoing provisions of the Pluralities Act 1838 are in the nature of a civil suit⁷, and are to be heard and disposed of by the chancellor⁸. In the absence of new rules the procedure remains as it was before the commencement of the Ecclesiastical Jurisdiction Measure 1963⁹, both in the consistory court and, in the event of an appeal, in the Arches Court of Canterbury or the Chancery Court of York¹⁰.

1 See the Pluralities Act 1838, s 32, and PARA 692 ante.

2 See *ibid* s 28, and PARA 682 ante.

3 It can only be recovered in the same year in which it is incurred or in the following year: *ibid* s 118.

4 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2: see PARA 1343 ante. If they are incurred by an unbeneficed clergyman or, under the Pluralities Act 1838, s 59, by a lay person they may be recovered by any person by action in the High Court: s 117.

5 *Ibid* s 114. The bishop is empowered to direct that, so far as not remitted, the penalties and forfeitures so recovered are to be applied towards augmenting or improving the benefice or the house of residence or any of its buildings or property: s 114. In other cases they are to be paid over to the Church Commissioners to be applied for the purposes of their general fund (as to which see PARA 1234 ante): cf. s 119; Church Commissioners Measure 1947, ss 2, 18 (2).

6 Pluralities Act 1838, s 112; Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2.

7 *Bluck v Rackham* (1846) 5 Moo PCC 305; on appeal sub nom. *Rackham v Bluck* (1846) 9 QB 691.

8 Ecclesiastical Jurisdiction Measure 1963, ss 6 (1) (d), 46 (1); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2.

9 Ecclesiastical Jurisdiction Measure 1963, s 65 (4). As to the mode of proceedings by monition and sequestration, see PARA 909 ante.

10 As to the jurisdiction of the Arches and Chancery Court, see *ibid* s 7 (1) (a), and PARA 1287 ante. The proceedings on appeal are to be heard and disposed of by the Dean of the Arches and Auditor: s 47 (1).

UPDATE

1348 Cases under the Pluralities Act 1838

NOTES 4, 6, 8--1963 Measure s 6(1)(d) amended: Statute Law (Repeals) Act 2004.

NOTE 9--1963 Measure s 65 repealed: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 8 (see PARA 1296A).

NOTE 10--1963 Measure s 47(1) substituted: 1991 Measure Sch 4 para 8 (see PARA 1285).

The 1963 Measure s 47 applies only to proceedings under that Measure: s 47(1) amended by the Clergy Discipline Measure 2003 Sch 1 para 6(a).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(5) OTHER CIVIL PROCEEDINGS/(ii) Procedure/1349. Conduct of suits under the general procedure.

1349. Conduct of suits under the general procedure.

In cases falling within the residuary jurisdiction of the consistory courts¹ the procedure to be followed, in the absence of new rules, is that which was generally applicable to the conduct of civil suits before the commencement of the Ecclesiastical Jurisdiction Measure 1963².

The first step in that procedure is ordinarily the issue of a citation³ to the defendant⁴. This is followed by pleadings or pleas, commencing with a libel alleging the facts on which the plaintiff's claim is founded⁵. The defendant answers the libel by a responsive allegation⁶, to which the plaintiff brings in a rejoining allegation if he joins issue or a counter-allegation if he desires to put forward additional facts⁷.

The cause is heard upon the pleadings as admitted, and the facts alleged are either proved by the depositions or affidavits of witnesses taken or made out of court, or by oral evidence in court⁸. In the absence of good reason to the contrary evidence will be given orally⁹, and in this event the old rule of the ecclesiastical courts that a material fact must be proved by two witnesses does not apply¹⁰.

1 See PARA 1344 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 65 (4). This applies also to proceedings by way of appeal to the Arches or Chancery Court: s 65 (4). For the forms of procedure, see Phillimore, *Ecclesiastical Law* (2nd Edn) 959 et seq.

3 *Fagg v Lee* (1873) LR 4 A & E 135; on appeal sub nom. *Lee v Fagg* (1874) LR 6 PC 38. The citation contains, inter alia, the names of the judge, the plaintiff and the defendant, the cause of action and the time and place of appearance: Phillimore, *Ecclesiastical Law* (2nd Edn) 959.

4 A suit can, however, be commenced by monition where its object is to compel the defendant to do a specific act in order to redress an injury which he has inflicted on the plaintiff's interests: *Fagg v Lee* (1873) LR 4 A & E 135; on appeal sub nom. *Lee v Fagg* (1874) LR 6 PC 38.

5 Phillimore, *Ecclesiastical Law* (2nd Edn) 960. In some cases the less formal procedure of an act on petition may be appropriate: see *Fagg v Lee* (1873) LR 4 A & E 135; on appeal sub nom. *Fagg v Lee* (1874) LR 6 PC 38; *Earl of Dysart v Countess of Dysart* (1842) 2 Notes of Cases 16 and 17; see Phillimore, *Ecclesiastical Law* (2nd Edn) 965.

6 The answer to a libel in a civil suit creates the *litis contestatio*. The old practice of requiring personal answers on oath in a civil suit appears to be obsolete: *Martin v Mackonochie (Second Suit)* (1874) LR 4 A & E 279 at 282, 283.

7 Phillimore, *Ecclesiastical Law* (2nd Edn) 962.

8 Phillimore, *Ecclesiastical Law* (2nd Edn) 963.

9 *Edwards and Mann v Hatton* (1865) 13 LT 253.

10 *Burder v O'Neill* (1863) 9 Jur NS 1109 at 1110.

UPDATE

1349 Conduct of suits under the general procedure

NOTE 2--1963 Measure s 65 repealed: Care of Churches and Ecclesiastical Jurisdiction
Measure 1991 Sch 8 (see PARA 1296A).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(i) In general/1350. Scope of disciplinary jurisdiction.

(6) DISCIPLINARY PROCEEDINGS

(i) In general

1350. Scope of disciplinary jurisdiction.

The criminal¹ jurisdiction of ecclesiastical courts appears to be confined to proceedings instituted in accordance with the relevant provisions of the Ecclesiastical Jurisdiction Measure 1963². These provisions are framed in terms which relate exclusively to proceedings against persons in holy orders³, and it seems that all lay persons are outside the scope of the jurisdiction⁴.

Proceedings for an offence involving matter of doctrine, ritual or ceremonial⁵ may be instituted only if it was committed within the province of Canterbury or York, but this limitation does not apply to proceedings under the Measure for other offences⁶.

1 The expression 'criminal suit' is used in the Ecclesiastical Jurisdiction Measure 1963 (see eg s 69) with reference to proceedings in which a person is charged with an ecclesiastical offence, and the trial procedure is assimilated to that of temporal courts exercising criminal jurisdiction: cf. ss 3, 28 (a), 36 (b), 45 (1) (a). Many of the offences which may be the subject of such proceedings, however, are not 'criminal' in the everyday sense of the word. Traditionally, the exercise of coercive jurisdiction by spiritual authority has been justified on the ground that it is for the good of the soul (see Phillimore, *Ecclesiastical Law* (2nd Edn) 837, 838), and it is in keeping with this principle that a bishop or archbishop is empowered to decide (after a private interview) that no further step be taken in the matter of an appropriate complaint which has been duly laid and verified: see the Ecclesiastical Jurisdiction Measure 1963, ss 23 (1) (a), 39 (1) (a), 40, and PARA 1363 post.

2 Ibid s 69. This section provides that, save for certain cases pending on 1st March 1965 (the date at which the Measure came into force) no proceedings by way of a criminal suit, other than those authorised by Parts IV-VI (ss. 22-45) of the Measure, may be instituted against a person in a consistory court or in the Court of Ecclesiastical Causes Reserved, and that no proceedings so authorised may be instituted except in accordance with those Parts of the Measure. The section makes no reference to the institution of proceedings in which a bishop or archbishop may be tried by a commission exercising original jurisdiction under ss 1 (2) (b), (3) (a), 9 or s 35 (although it does have refer to the authorisation of proceedings under Part V (ss. 32-37)). It is thought that this may have been an inadvertent omission; in any case it would not affect the application of s 69 to proceedings against priests and deacons, nor would it affect the statements contained in the text to notes 3, 4 infra.

3 See ibid ss 14 (1), 17, and PARA 1351 post.

4 See ibid ss 14 (1), 17, 69 (cf. note 2 supra); see also s 82 (2) (c), and PARA 1351 post.

5 See PARA 1352 post.

6 Ecclesiastical Jurisdiction Measure 1963, s 15.

UPDATE

1350 Scope of disciplinary jurisdiction

TEXT AND NOTES--Jurisdiction over proceedings for misconduct is exercised by disciplinary tribunals or the Vicar-General's Court, under the Clergy Discipline Measure 2003: see PARA 1350A et seq. Jurisdiction in non-disciplinary matters continues to be exercise under the Ecclesiastical Jurisdiction Measure 1963.

1963 Measure Pts IV (ss 22-31), V (ss 32-37), and ss 1(2)(b), (3)(a), 9 repealed: 2003 Measure Sch 2. As to disciplinary proceedings for misconduct see PARA 1350A.

1963 Measure s 69 amended by the 2003 Measure Sch 1 para 12, Sch 2, to remove the references to the 1963 Measure Pts IV and V.

TEXT AND NOTES 3-4--1963 Measure s 14(1) amended by the 2003 Measure Sch 1 para 12, to remove the references to the 1963 Measure Pts IV and V.

TEXT AND NOTE 6--Words 'but this ... offences' omitted: 1963 Measure s 15 amended by the Clergy Discipline Measure 2003 Sch 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(i) In general/1350A. Proceedings for misconduct.

1350A. Proceedings for misconduct.

1. Discipline for misconduct under the Clergy Discipline Measure 2003

Provisions of the Clergy Discipline Measure 2003¹ and the Clergy Discipline Rules 2005² are to have effect for the purpose of regulating proceedings against a clerk in Holy Orders who is alleged to have committed an act or omission other than one relating to matters involving doctrine, ritual or ceremonial³. 'Misconduct' in that Measure is to be construed accordingly⁴. Proceedings in relation to matters involving doctrine, ritual or ceremonial will continue to be conducted in accordance with the Ecclesiastical Jurisdiction Measure 1963⁵.

Disciplinary proceedings under the Clergy Discipline Measure 2003 may be instituted against any archbishop, bishop, priest or deacon alleging any of the following: (1) doing any act in contravention of the laws ecclesiastical; (2) failing to do any act required by the laws ecclesiastical; (3) neglect or inefficiency in the performance of the duties of his office; (4) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders⁶. In the case of a minister licensed to serve in a diocese by the bishop thereof, the licence is not terminated by reason of that person's misconduct otherwise than by way of such proceedings⁷. Provisions of the Clergy Discipline Appeal Rules 2005⁸ regulate appeals from disciplinary proceedings under the Clergy Discipline Measure 2003⁹.

No proceedings in respect of unbecoming conduct may be taken in respect of the lawful political opinions or activities of any bishop, priest or deacon¹⁰.

1 Ie the Clergy Discipline Measure 2003 ss 7-48.

2 Ie the Clergy Discipline Rules 2005, SI 2005/2022.

3 2003 Measure s 7(1); SI 2005/2022 r 3.

4 2003 Measure s 7(1).

5 Ibid s 7(2).

6 2003 Measure s 8(1). As to the matters which have been held to amount to conduct unbecoming see PARA 1356. Note, however, that those cases were decided before the enactment of the 2003 Measure.

7 Ibid s 8(2). As to the matters which have been held to amount to neglect of duty see PARA 1356. Note, however, that those cases were decided before the enactment of the 2003 Measure.

8 Ie the Clergy Discipline Appeal Rules 2005, SI 2005/3201.

9 Ibid r 3

10 2003 Measure s 8(3).

2. Application of provisions

Certain provisions of the Ecclesiastical Jurisdiction Measure 1963 apply, with necessary modifications, for the purposes of the Clergy Discipline Measure 2003¹. Those provisions relate to (1) payment of costs, powers in relation to costs, and the recovery of costs²; (2) payment of expenses³; (3) fees payable⁴; (4) performance of duties during suspension⁵; (5) occupation of

parsonage house⁶; (6) suspension of penalty during appeal⁷; (7) restrictions during suspension⁸; (8) provisions as to lapse on avoidance of preferment⁹; (9) rights of patronage during suspension¹⁰; (10); recording of declarations¹¹; (11) place of sitting¹²; (12) evidence¹³; and (13) savings¹⁴.

Transitional provision is made as to the application of the Clergy Discipline Measure 2003 and the Ecclesiastical Jurisdiction Measure 1963¹⁵.

- 1 Clergy Discipline Measure 2003 s 35(1). As to the modifications see s 35(2).
- 2 le the Ecclesiastical Jurisdiction Measure 1963 ss 58, 60, 61: see PARAS 1300-1302.
- 3 le ibid s 62: see PARA 1303.
- 4 le ibid s 63: see PARA 1304.
- 5 le ibid s 71): see PARAS 720, 908, 1379.
- 6 le ibid s 72: see PARAS 720, 1379.
- 7 le ibid s 73: see PARA 1369.
- 8 le ibid s 74: see PARA 1380.
- 9 le ibid s 75.
- 10 le ibid s 76: see PARA 1381.
- 11 le ibid s 78: see PARA 1372.
- 12 le ibid s 80: see PARA 1297.
- 13 le ibid s 81: see PARAS 1296, 1299, 1365.
- 14 le ibid s 83(2), (3): see PARAS 492, 498, 1266, 1351, 1362.
- 15 See 2003 Measure s 47.

3. Institution of proceedings for misconduct

No disciplinary proceedings under the Clergy Discipline Measure 2003 may be instituted unless the misconduct in question, or the last instance of it in the case of a series of acts or omissions, occurred within the period of one year ending with the date on which proceedings are instituted¹.

Disciplinary proceedings may be instituted against any person who is subject to the jurisdiction of a disciplinary tribunal or the Vicar-General's court², by way of complaint made in writing, only as follows³.

- 40 (1) In the case of a priest or deacon, the proceedings must be taken by (a) a person nominated by the parochial church council of any parish which has a proper interest in making the complaint, if not less than two-thirds of the lay members of the council are present at a duly convened meeting of the council and not less than two-thirds of the lay members present and voting pass a resolution to the effect that the proceedings be instituted; or (b) a churchwarden of any such parish; or (c) any other person who has a proper interest in making the complaint⁴; the complaint must be laid before the diocesan bishop concerned⁵.
- 41 (2) In the case of a bishop, the proceedings must be taken by (a) a person nominated by the bishop's council of the diocese concerned, if not less than two-thirds of the members of the council are present at a duly convened meeting of the

council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or (b) any other person who has a proper interest in making the complaint⁶; the complaint must be laid before the archbishop concerned⁷.

- 42 (3) In the case of an archbishop, the proceedings must be taken by (a) a person nominated by the archbishop's council of his diocese if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or (b) any other person who has a proper interest in making the complaint⁸; the complaint must be laid before the other archbishop⁹.

A complaint must be accompanied by written particulars of the alleged misconduct, and written evidence in support of the complaint must be sent to the bishop or archbishop, as the case may be, either with the complaint or at such later time as he may allow¹⁰.

In the case of a clerk in Holy Orders serving in a cathedral church, disciplinary proceedings may be instituted only by a person nominated by the council of the cathedral church, or any other person, if the diocesan bishop concerned determines that that person has a proper interest in making the complaint¹¹.

In the case of a chaplain of a prison, hospital, university, school or other institution, disciplinary proceedings may be instituted only by a person duly authorised by the diocesan bishop concerned to institute such proceedings¹².

In the case of a chaplain of one of the armed forces of the Crown, disciplinary proceedings may be instituted only if the archbishop of Canterbury determines that the person concerned has a proper interest in making the complaint; and the complaint must be laid before the archbishop of Canterbury¹³.

In the case of a minister who has a licence from the archbishop of a province (ie a licence to preach throughout the province), disciplinary proceedings may be instituted only by a person duly authorised by the archbishop to institute such proceedings; and the complaint must be laid before that archbishop¹⁴.

In the case of a minister who has a licence from the University of Oxford or Cambridge (ie a licence to preach throughout England), disciplinary proceedings may be instituted only by a person duly authorised by the archbishop of Canterbury to institute such proceedings; and the complaint must be laid before that archbishop¹⁵.

1 Clergy Discipline Measure 2003 s 9. However, when the misconduct is one for which the person concerned has been convicted either on indictment or summarily, proceedings may be instituted within 12 months of the conviction becoming conclusive, notwithstanding that the period of one year has elapsed: s 9 first proviso. Further, the president of tribunals may, if he considers that there was good reason why the complainant did not institute proceedings at an earlier date, after consultation with the complainant and the respondent, give his written permission for the proceedings to be instituted after the expiry of the said period of one year: s 9 second proviso. An application out of time under s 9 must be made in writing in form 1c (set out in the Clergy Discipline Rules 2005, SI 2005/2022, Schedule) or in a substantially similar document: see r 8. For the meaning of 'misconduct' see PARA 1350A.1. As to the president of tribunals see PARA 1350C.5.

A conviction becomes conclusive, and proceedings under the 2003 Measure become conclusive, for the purposes of the 2003 Measure (1) where there has been an appeal, on the date on which the appeal is dismissed or abandoned or the proceedings on appeal are finally concluded, but, if varied on appeal, is conclusive only as so varied, and so far as it is reversed on appeal ceases to have effect; (2) if there is no such appeal, on the expiration of the time limited for such appeal, or in the case of a conviction where no time is so limited, of two months from the date of the conviction; and (3) in the case of a conviction against which there is no right of appeal from the date of the conviction: s 40(1). After the conviction of a clerk in Holy Orders by a secular court becomes conclusive a certificate of such conviction is conclusive proof that he has committed the act therein specified, for the purposes of the 2003 Measure: s 40(2). In the event of any such conviction by a secular court as makes a clerk in Holy Orders subject to removal from any preferment, or renders him liable to

proceedings under the 2003 Measure the court must cause the prescribed certificate of the conviction to be sent to the bishop of the diocese in which the court sits, and such certificate must be preserved in the registry of the diocese, or of any other diocese to which it may be sent by the direction of the bishop: s 40(3). For the meaning of 'preferment' see PARA 1350C.6.

2 le by virtue of *ibid* s 6: see PARA 1350C.6. As to disciplinary tribunals see PARA 1350C.3.

3 *Ibid* s 10(1).

4 *Ibid* s 10(1)(a). Disciplinary proceedings under s 10(1)(a) must be instituted by way of a written complaint made in form 1a (set out in SI 2005/2022 Schedule) or in a substantially similar document: see r 4. As to joint complainants, see r 5. As to the form and submission of statements in support of a complaint, see rr 6, 7, Schedule form 3.

5 2003 Measure s 10(2)(a).

6 *Ibid* s 10(1)(b).

7 *Ibid* s 10(2)(b). The Clergy Discipline Rules 2005, SI 2005/2022, apply, subject to rr 82-90, to proceedings against bishops and archbishops under the 2003 Measure as they apply to priests and deacons, and are to be construed accordingly for the purposes of such proceedings: SI 2005/2022 r 81(1). Disciplinary proceedings under the 2003 Measure s 10 against a bishop or archbishop must be instituted by way of a written complaint made in form 1b (set out in SI 2005/2022 Schedule) or in a substantially similar document: see r 82.

8 *Ibid* s 10(1)(c).

9 *Ibid* s 10(2)(c).

10 *Ibid* s 10(3).

11 *Ibid* s 42(1), (2). See further SI 2005/2022 rr 91(a), 92.

12 2003 Measure s 42(3). See further SI 2005/2022 rr 91(b), 93.

13 2003 Measure s 42(4). References in the 2003 Measure to the diocesan bishop concerned must be construed as references to the archbishop of Canterbury: s 42(4). See further SI 2005/2022 rr 91(c), 94.

14 2003 Measure s 42(5). References in the 2003 Measure to the diocesan bishop concerned must be construed as references to the archbishop of Canterbury: s 42(5). See further SI 2005/2022 rr 91(d), 95.

15 2003 Measure s 42(6). References in the 2003 Measure to the diocesan bishop concerned must be construed as references to the archbishop of Canterbury: s 42(6). See further SI 2005/2022 rr 91(e), 96.

4. Preliminary scrutiny

When a complaint in writing has been made¹ it must be referred in the first instance to the registrar² of the diocese or province concerned, as the case may be, who must thereupon scrutinise the complaint in consultation with the complainant with a view to forming a view as to whether or not the parochial church council or other person making the complaint has a proper interest in doing so or, if the complainant purports to be a churchwarden, establishing that he is such, and as to whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with the Clergy Discipline Measure 2003; the registrar must notify the respondent that the complaint has been referred to him³.

Having scrutinised the complaint the registrar must within 28 days following its receipt by him or such longer period as he considers to be justified in the particular circumstances⁴, send a written report to the bishop by whom the complaint was received setting out the registrar's views, and thereupon the bishop must deal with the complaint in accordance with the Measure, having regard to the registrar's report⁵.

On receipt of the registrar's report the bishop may dismiss the complaint and, if he does so, must give written notice of the dismissal to the complainant and the respondent, together with a copy of the report⁶. On receipt of a notice of dismissal the complainant may request the president of tribunals⁷ to review the dismissal, and the president may then uphold the dismissal

or, if he considers the dismissal to be plainly wrong, reverse it and direct the bishop to deal with the complaint accordingly⁸.

1 Ie in accordance with the Clergy Discipline Measure 2003 s 10 (see PARA 1350A.3).

2 The registrar may delegate any or all of his functions under *ibid* s 11 to such person as he may designate: s 11(6).

3 *Ibid* s 11(1). See further the Clergy Discipline Rules 2005, SI 2005/2022, rr 10, 11, 14.

4 Where the registrar proposes to extend this period, he must, before doing so, consult the complainant and the respondent: 2003 Measure s 11(5). The period may not be extended more than once: s 11(2) proviso. Where the registrar proposes to extend the period he must, not later than 21 days after receipt of the complaint, notify the complainant and the respondent of the reasons why such an extension is required and the period of extension proposed: SI 2005/2022 r 13(1). See also r 19.

5 2003 Measure s 11(2). As to the registrar's written report, see SI 2005/2022 r 12.

6 2003 Measure s 11(3). On receipt of the complaint, the bishop must send the complainant an acknowledgement of the complaint, and must refer the complaint and written evidence in support of it to the registrar: SI 2005/2022 r 9. If the bishop dismisses a complaint under the 2003 Measure s 11(3), he must send to the complainant and the respondent written notice of dismissal together with reasons for the dismissal, and a copy of the registrar's report: SI 2005/2022 r 15(1). If the bishop does not dismiss such a complaint or if a dismissal is reversed by the president of tribunals, the bishop must notify the complainant and the respondent in writing that the complaint has not been dismissed, provide the complainant and the respondent with a copy of the registrar's report (unless previously he has done so under r 15(1)), and send the respondent a copy of the respondent's answer to a complaint (ie form 2, set out in the Schedule): r 17(1). See further r 17(1)-(7), and Schedule form 3 (form in support of an answer to a complaint).

7 As to the president of tribunals see PARA 1350C.5.

8 Ie in accordance with the Clergy Discipline Measure 2003 s 12 (see PARA 1350A.5): s 11(4). Such a request must be made in writing in form 4 (set out in SI 2005/2022 Schedule) or in a substantially similar document: see r 16.

5. Dealing with the complaint

If the complaint is not dismissed¹ the bishop must, within 28 days following the receipt by him of the registrar's report² or the president of tribunal's direction³, as the case may be, or such longer period as he considers to be justified in the particular circumstances of the case⁴, determine which of the following courses is to be pursued⁵:

- 43 (1) he may take no further action⁶;
- 44 (2) he may, if the respondent consents, direct that the matter remain on the record conditionally⁷;
- 45 (3) he may direct that an attempt to bring about conciliation is to be made⁸;
- 46 (4) he may impose a penalty by consent⁹; or
- 47 (5) he may direct that the complaint is to be formally investigated¹⁰.

1 Ie under the Clergy Discipline Measure 2003 s 11(3): see PARA 1350A.4.

2 Ie the report made pursuant to *ibid* s 11(2): see PARA 1350A.4.

3 Ie the direction made pursuant to *ibid* s 11(4): see PARA 1350A.4.

4 Where the bishop proposes to extend this period he must, before doing so, consult the complainant and the respondent: *ibid* s 12(2). The bishop must consult the complainant and the respondent where he proposes to extend the period: Clergy Discipline Rules 2005, SI 2005/2022, r 18(1). See also r 19.

5 2003 Measure s 12(1).

6 Ibid s 12(1)(a). In this case the bishop must reduce his determination to writing and give a copy of it to the complainant and the respondent: ss 12(1)(a), 13(1), (2). The bishop must also state reasons for taking no further action, notify the complainant and the respondent that the complainant may refer the complaint to the president of tribunals for consideration of the bishop's determination, and send a copy of the determination to the complainant and the respondent: SI 2005/2022 r 20. The complainant may refer the complaint to the president of tribunals and, if the president considers that the bishop's determination was plainly wrong, he may direct the bishop to pursue such of the courses specified in heads (2)-(5) in the TEXT as he considers appropriate, in which case the bishop must proceed accordingly: 2003 Measure s 13(3). The complainant may refer the complaint to the president of tribunals within 14 days of receiving the bishop's determination that there is to be no further action and any such referral must be in writing in form 4 (set out in SI 2005/2022 Schedule) or in a substantially similar document: see r 21(1), (2). Within 28 days of receipt of the complainant's referral, the president of tribunals' decision must be given in writing with reasons and sent to the complainant, the respondent and the bishop: see r 22.

7 2003 Measure s 12(1)(b). In this case the complaint and the bishop's determination must be notified to the archbishop concerned and remain on a record maintained by the diocesan registrar concerned for such period not exceeding five years as the bishop may determine and no further action is to be taken: ss 12(1)(b), 14(1), (2). However, and notwithstanding s 9 (see PARA 1350A.3), if another complaint is made under s 10 above against the respondent and that complaint is dealt with under head (3), (4) or (5) in the TEXT, the recorded complaint may be dealt with under any of those heads together with the other complaint: s 14(3). The bishop must reduce his determination to writing and give a copy of it to the complainant and the respondent, and supply them with a statement explaining the effect of s 14(2), (3): s 14(4). See further SI 2005/2022 rr 23-25, 81, 83.

8 2003 Measure s 12(1)(c). In this case the bishop must afford the complainant and the respondent an opportunity to make representations and, if both of them agree to the appointment of a conciliator, appoint a conciliator: ss 12(1)(c), 15(1), (2). He may not appoint any person to be a conciliator unless he is satisfied that there is no reason to question the impartiality of that person: s 15(3). A conciliator must use his best endeavours to bring about a conciliation between the complainant and the respondent and: s 15(4). If within three months following his appointment or such further period as he may, with the agreement of the complainant and the respondent, allow, a conciliation is brought about, he must submit a report on the case to the bishop, together with such recommendations as he may wish to make: s 15(4)(a). If a conciliation is not brought about but the complainant and the respondent agree that another conciliator should be appointed, the bishop may appoint that other person as the conciliator: s 15(4)(b). If a conciliation is not brought about and the complainant and the respondent do not agree to a different conciliator, the conciliator must refer the matter back to the bishop: s 15(4)(c). If the complainant and the respondent do not agree to the appointment of a conciliator or as to the person to be appointed, or to a different conciliator, the bishop must proceed to deal with the complaint under head (1), (2), (4) or (5) in the TEXT: s 15(5). See further SI 2005/2022 r 26.

9 2003 Measure s 12(1)(d). Where the bishop considers that the imposition of a penalty by consent might be appropriate, he must afford the complainant and the respondent an opportunity to make representations and, if the respondent consents to the imposition of a penalty and he and the bishop agree as to the penalty, the bishop must proceed accordingly and thereafter no further step may be taken in regard thereto: ss 12(1)(d), 16(1). However, where it is agreed that prohibition for life or resignation is the appropriate course the respondent or the bishop may, within seven days following the date of the agreement, withdraw his agreement and the prohibition or resignation must not be implemented: s 16(2). If the consent of the respondent to the imposition of a penalty is not obtained or he and the bishop are unable to reach agreement as to the nature of the penalty, the bishop must proceed to deal with the complaint under head (5) in the TEXT: s 16(3). The bishop must notify the complainant of any action taken in pursuance of s 16 and must also notify the archbishop of the province concerned and the registrar of the diocese concerned of any penalty agreed: s 16(4). A penalty by consent under s 16 may only be imposed in respect of such misconduct alleged in the complaint as the respondent admits: SI 2005/2022 r 27(1). In addition to resignation by consent under the 2003 Measure s 16, any of the penalties that may be imposed under s 24 (see PARA 1350B.1) on a finding of misconduct may be imposed by consent under s 16: SI 2005/2022 r 27(2). See further r 27(3)-(8).

10 2003 Measure s 12(1)(e). In this case he must refer the matter to the designated officer and it is then the duty of that officer to cause inquiries to be made into the complaint: ss 12(1)(e), 17(1). After due inquiries have been made into the complaint the designated officer must refer the matter to the president of tribunals for the purpose of deciding whether there is a case to answer in respect of which a disciplinary tribunal or the Vicar-General's court, as the case may be, should be requested to adjudicate: s 17(2). If the president of tribunals decides that there is a case for the respondent to answer he must declare that as his decision and refer the complaint to a disciplinary tribunal or the Vicar-General's court, as the case may be, for adjudication: s 17(3). If he decides that there is no case for the respondent to answer he must declare his decision, and thereafter no further steps may be taken in regard thereto: s 17(4). The president of tribunals must reduce his decision to writing and give a copy of it to the complainant, the respondent, the bishop and the designated officer: s 17(5). The designated officer must investigate a complaint referred to him for a formal investigation, and must send or deliver a written report to the president of tribunals: see SI 2005/2022 r 28. The president of tribunals must then decide if there is a case for the respondent to answer and, where he decides there is, he must refer the

case to the tribunal: see r 29. 'Designated officer' means an officer of the legal office of the National Institutions of the Church of England designated by the Archbishops' Council for the purposes of the Clergy Discipline Measure 2003: s 43(1); SI 2005/2022 r 106. As to disciplinary tribunals see PARA 1350C.3.

6. Conduct of proceedings

In disciplinary proceedings under the Clergy Discipline Measure 2003 it is the duty of the designated officer¹ or a person duly authorised by him to conduct the case for the complainant². In any such proceedings the president of tribunals³ may direct (1) that the complaint is to be withdrawn, whereupon no further action may be taken in the proceedings, or (2) that an attempt or further attempt to bring about conciliation is to be made⁴.

In any such proceedings the standard of proof to be applied by the tribunal or court is the same as in proceedings in the High Court exercising civil jurisdiction⁵. The determination of any matter before the tribunal or court must be according to the opinion of the majority of the members thereof and must be pronounced in public together with its reasons⁶. The hearing must be in private, except that the tribunal or court, if satisfied that it is in the interests of justice so to do or the respondent so requests, must direct that the hearing is to be in public, in which case the tribunal or court may, during any part of the proceedings, exclude such person or persons as it may determine⁷.

Where a complaint is referred to a tribunal for adjudication, the registrar of tribunals may hold one or more preliminary hearings to identify the issues and give directions⁸, and must give notice to the parties of such hearings⁹. Detailed provision has been made as to the conduct of proceedings before the tribunal¹⁰.

1 For the meaning of 'designated officer' see sub-para 5 NOTE 10.

2 Clergy Discipline Measure 2003 s 18(1).

3 As to the president of tribunals see PARA 1350C.5.

4 Clergy Discipline Measure 2003 s 18(2). If head (2) in the text applies, the provisions of s 15 (see PARA 1350A.5 NOTE 8) apply: s 18(2).

5 Ibid s 18(3)(a).

6 Ibid s 18(3)(b).

7 Ibid s 18(3)(c); Clergy Discipline Rules 2005, SI 2005/2022, r 40.

8 The registrar must give directions for the just disposal of the proceedings in accordance with the overriding objective: *ibid* r 30(1)(b). The overriding objective is to enable formal disciplinary proceedings brought under the 2003 Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised: see SI 2005/2022 rr 1, 2.

9 Ibid r 30(1)(a). As to directions preparatory to a hearing before a tribunal, see generally rr 30-34. As to witness statements for use before a tribunal and permission to rely on expert evidence, see rr 35, 36.

10 See *ibid* Pt VIII (rr 37-53), Pt IX (rr 54-59) and rr 81, 84.

7. Suspension during proceedings

Where a complaint in writing¹ is made against a priest or deacon holding any preferment in a diocese, or a priest or deacon holding any preferment in a diocese is arrested on suspicion of committing a criminal offence, the bishop of the diocese may, by notice in writing served on him, suspend him from exercising or performing without the leave of the bishop any right or duty of or incidental to his office². The bishop may at any time, by notice in writing served on the priest or deacon concerned, revoke such a notice of suspension³. Where such a notice of

suspension is served and has not been revoked the suspension continues until the expiry of the period of three months following service of the notice or until the proceedings under the Clergy Discipline Measure 2003 or for the criminal offence are concluded, whichever occurs earlier⁴.

Where a notice of suspension is served the bishop may, after consultation with the churchwardens and with the incumbent or priest in charge concerned, make such arrangements as he thinks fit for the ministrations of the church or churches concerned while the suspension remains in force⁵. While the notice of suspension remains in force in relation to a priest or deacon he must not interfere with any person performing the services of a church in pursuance of such arrangements, and any such interference is regarded⁶ as an act in contravention of the laws ecclesiastical⁷.

Where a complaint in writing is made against a bishop⁸ or archbishop, or a bishop or archbishop is arrested on suspicion of committing a criminal offence, the archbishop of the province in which the bishop holds office or, in the case of an archbishop, the other archbishop, may with the consent of the two most senior diocesan bishops in that province or the province of the other archbishop, as the case may be, by notice in writing suspend him from exercising any right or duty of or incidental to his office⁹. The archbishop may at any time, by notice in writing served on the bishop or archbishop concerned, revoke such a notice of suspension¹⁰. Where a notice of suspension is served the archbishop may, after consultation with the two most senior diocesan bishops of his province, make such arrangements as he thinks fit for the ministrations of the diocese or province concerned while the suspension remains in force¹¹. While the notice of suspension remains in force in relation to a bishop or archbishop he must not interfere with any person performing functions in pursuance of such arrangements¹². Where such a notice of suspension is served and has not been revoked the suspension continues until the expiry of the period of three months following service of the notice or until the proceedings under the Clergy Discipline Measure 2003 or for the criminal offence are concluded, whichever occurs earlier¹³.

1 Ie under the Clergy Discipline Measure 2003 s 10(1): see PARA 1350A.3.

2 Ibid s 36(1); Clergy Discipline Rules 2005, SI 2005/2022, rr 60(1), 61(1). However, in the case of a complaint, the priest or deacon must not be suspended unless and until the complaint falls to be considered under 2003 Measure s 12(1) (see PARA 1350A.5): s 36(1) proviso. A notice suspending a priest or deacon (1) following a complaint must be in form 12a (set out in SI 2005/2022 Schedule) or in a substantially similar document; and (2) following his arrest on suspicion of committing a criminal offence must be in form 13a (set out in the Schedule) or in a substantially similar document and, in either case, may specify any rights or duties which by leave of the bishop are not suspended: rr 60(2), 61(2). See further rr 62 (contents of a notice of suspension), 63 (notification to others of suspension), 65 (notification of cessation of suspension), and 66 (appeals against notice of suspension). A priest or deacon on whom a notice of suspension is served may appeal against the suspension to the president of tribunals and on any such appeal the president of tribunals may, within 28 days following the lodging of the appeal, either confirm or revoke the suspension: 2003 Measure s 36(6). For the meaning of 'preferment' see PARA 1350C.6. A priest or deacon may be suspended under s 36 until proceedings on an appeal have been disposed of: Clergy Discipline Appeal Rules 2005, SI 2005/3201, r 10(2).

3 2003 Measure s 36(2); SI 2005/2022 r 64(1).

4 2003 Measure s 36(3). If the proceedings are not concluded before the expiry of that period a further notice of suspension may be served, and this provision applies in relation to the further suspension as it applied to the earlier suspension or suspensions: s 36(3).

5 Ibid s 36(4).

6 Ie for the purposes of ibid s 8(1): see PARA 1350A.1.

7 Ibid s 36(5).

8 'Bishop' here means any diocesan bishop, any suffragan bishop and any other bishop: ibid s 37(5).

9 Ibid s 37(1). However, in the case of a complaint, the bishop or archbishop must not be suspended unless and until the complaint falls to be considered under s 12(1) (see PARA 1350A.5): s 37(1) proviso. The Clergy Discipline Rules 2005, SI 2005/2022, apply, subject to rr 82-90, to proceedings against bishops and archbishops

under the 2003 Measure as they apply to priests and deacons, and are to be construed accordingly for the purposes of such proceedings: SI 2005/2022 r 81(1). A notice suspending a bishop or archbishop (1) following a complaint must be in form 12b (set out in the Schedule) or in a substantially similar document; and (2) following his arrest on suspicion of committing a criminal offence must be in form 13b (set out in the Schedule) or in a substantially similar document: rr 85(a), 86(a). The notice must be signed by the archbishop of the province in which the bishop to be suspended holds office or, in the case of an archbishop to be suspended, signed by the other archbishop, and countersigned by the two most senior diocesan bishops in that province or the province of the other archbishop, as the case may be: rr 85(b), (c), 86(b), (c). See further rr 87 and 88 (notification to others of suspension). A bishop or archbishop on whom a notice of suspension is served may appeal against the suspension to the president of tribunals and on any such appeal the president of tribunals may, within 28 days following the lodging of the appeal, either confirm or revoke the suspension: 2003 Measure ss 36(6), 37(6). A bishop or archbishop may be suspended under s 37 until proceedings on an appeal have been disposed of: SI 2005/3201 r 10(2).

10 2003 Measure s 37(2).

11 Ibid s 37(3).

12 Ibid s 37(4).

13 Ibid ss 36(3), 37(6).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(i) In general/1350B. Proceedings for misconduct.

1350B. Proceedings for misconduct.

1. Penalties and conditional discharge

On a finding by a disciplinary tribunal¹ or the Vicar-General's court² in disciplinary proceedings that the respondent committed the misconduct complained of, the tribunal or court may (1) impose on the respondent any one or more of the penalties specified below³; or (2) defer consideration of the penalty, and for that purpose may adjourn the proceedings⁴; or (3) impose no penalty⁵.

One or more of the following penalties may be imposed on a respondent on a finding that he has committed any misconduct, namely⁶:

- 48 (a) prohibition for life, that is to say prohibition without limit of time from exercising any of the functions of his Orders⁷;
- 49 (b) limited prohibition, that is to say prohibition for a specific time from exercising any of the functions of his Orders⁸;
- 50 (c) removal from office, that is to say, removal from any preferment which he then holds⁹;
- 51 (d) in the case of a minister licensed to serve in a diocese by the bishop thereof, revocation of the licence¹⁰;
- 52 (e) injunction, that is to say, an order to do or to refrain from doing a specified act¹¹;
- 53 (f) rebuke¹².

Where, on a finding that the respondent has committed any misconduct, the disciplinary tribunal or Vicar-General's court, as the case may be, is of opinion, having regard to the circumstances including the nature of the misconduct and the character of the respondent, that it is inexpedient to impose a penalty it may make an order discharging him subject to the condition that he commits no misconduct during such period not exceeding two years from the date of the order as may be specified in the order¹³. If a person in whose case such an order has been made is found, in disciplinary proceedings under the Clergy Discipline Measure 2003, to have committed misconduct during the period specified in the order, the disciplinary tribunal or the Vicar-General's court, as the case may be, may deal with him for the misconduct for which the order was made in any manner in which it could deal with him if it had just found that he had committed that misconduct¹⁴.

Any person (including a person deposed from Holy Orders under the Ecclesiastical Jurisdiction Measure 1963)¹⁵ who performs in the Church of England any function which, under a penalty imposed on him under the Clergy Discipline Measure 2003 or a censure imposed on him under the Ecclesiastical Jurisdiction Measure 1963, he is not permitted to perform, commits an act of misconduct under the 2003 Measure and, in the case of a person deposed from Holy Orders, disciplinary proceedings under that Measure may be instituted against him in respect of the misconduct as if he had not been deposed¹⁶.

1 As to the disciplinary tribunal see PARA 1350C.3.

2 As to the Vicar-general's court see PARA 1350C.4.

3 Clergy Discipline Measure 2003 s 19(1)(a). The penalties are specified in s 24 (see TEXT AND NOTES 6-12). Reference to a penalty includes a reference to an order for conditional discharge under s 25: s 19(3). The implementation of a penalty under s 24 which has been imposed by the tribunal or court must be postponed pending the disposal of an appeal made under the Clergy Discipline Appeal Rules 2005, SI 2005/3201, r 5 or 6 (see PARA 1350B.2): r 10(1).

Before imposing a penalty the disciplinary tribunal or court may invite, in the case of a disciplinary tribunal, the bishop of the diocese concerned, or in the case of the Vicar-General's court, the archbishop concerned or, if the respondent is an archbishop, the other archbishop, to express in writing his views as to the appropriate penalty; the tribunal or court must have regard to any such views in imposing the penalty, if any, and the views of the bishop or archbishop, as the case may be, must be conveyed in writing to the respondent: 2003 Measure s 19(2). However, if the bishop or archbishop has given evidence in the proceedings, he must not be consulted: s 19(2) proviso.

4 Ibid s 19(1)(b).

5 Ibid s 19(1)(c). For the meaning of 'misconduct' see PARA 1350A.1.

6 Ibid s 24(1).

7 Ibid s 24(1)(a). As to the removal of a prohibition for life see PARA 1350B.3.

8 Ibid s 24(1)(b). See *Re King* [2009] PTSR 431.

9 2003 Measure s 24(1)(c). No penalty of removal from office imposed on an archbishop or bishop or on any person holding any preferment the right to appoint to which is vested in Her Majesty (not being a parochial benefice) has effect unless and until Her Majesty by Order in Council confirms the penalty: s 24(2). For the meaning of 'preferment' see PARA 1350C.6.

10 Ibid s 24(1)(d).

11 Ibid s 24(1)(e).

12 Ibid s 24(1)(f).

13 Ibid s 25(1). Before making such an order the tribunal or court must explain to the respondent in ordinary language that if he commits further misconduct during the period specified in the order a penalty may be imposed for the original misconduct: s 25(2).

14 Ibid s 25(4). Where a penalty is imposed under this provision on a person conditionally discharged for the misconduct in respect of which the order for conditional discharge was made, that order ceases to have effect: s 25(3).

15 As to deposition under the Ecclesiastical Jurisdiction Measure 1963 see PARA 1375.

16 Clergy Discipline Measure 2003 s 29.

2. Appeals

In disciplinary proceedings under the Clergy Discipline Measure 2003, the respondent may appeal against any penalty imposed on him¹, and the respondent on a question of law or fact, and the designated officer², on a question of law, may appeal against any finding of the disciplinary tribunal³ or the Vicar-General's court⁴. Such appeal is to the Arches Court of Canterbury (where the proceedings take place in the province of Canterbury) or the Chancery Court of York (where the proceedings take place in the province of York)⁵.

Notice of appeal must be sent in the specified form⁶ or in a substantially similar document⁷, together with a copy of the decision of the disciplinary tribunal or the Vicar-General's court⁸. Notice of appeal and attached documents must be sent so as to be received by the provincial registrar within 28 days of the public pronouncement of the decision or penalty imposed, whichever is later⁹. On receipt of a notice of appeal the provincial registrar must give directions for the just disposal of the proceedings in accordance with the overriding objective¹⁰.

Provision is made for the fixing the date and place of the appeal hearing¹¹, amendment or withdrawal of appeals¹², striking out of appeals which are not pursued with due expedition¹³, holding hearings in the absence of a party¹⁴, adjournment of hearings¹⁵ and exclusion of disruptive persons¹⁶. An appeal is to continue despite the death of a complainant¹⁷, and may be heard following the death of a respondent¹⁸. The Dean of the Arches and Auditor or the appellate court may hear evidence which was not before the tribunal¹⁹ and witnesses may be called to give oral evidence²⁰. The appeal hearing will normally be in held public²¹, though the appellate court may order that the identity of any person involved or referred to in the proceedings must not be published or otherwise made public²². On any appeal the appellate court may, by a majority²³, (1) confirm, reverse or vary any finding of the tribunal²⁴; (2) refer a particular issue back to the tribunal for hearing and determination in accordance with any direction that may be given by the appellate court²⁵; (3) order the complaint to be reheard by the same or a differently constituted tribunal²⁶; (4) confirm or set aside a penalty imposed by the tribunal, or substitute a greater or lesser penalty²⁷; (5) impose a penalty²⁸ where the tribunal has not imposed any penalty or when upholding an appeal on a question of law by the designated officer²⁹. The Dean of the Arches and Auditor must pronounce the appellate court's determination of the appeal in public³⁰.

1 Clergy Discipline Measure 2003 s 20(1)(a); Clergy Discipline Appeal Rules 2005, SI 2005/3201, r 3(a)(ii). As to penalties see PARA 1350B.1.

2 For the meaning of 'designated officer' see PARA 1350A.5 NOTE 10.

3 As to the disciplinary tribunal see PARA 1350C.3.

4 2003 Measure s 20(1)(b); SI 2005/3201 r 3(a)(i), (b). As to the Vicar-general's court see PARA 1350C.4.

5 2003 Measure s 20(1); SI 2005/3201 r 4. Proceedings on such an appeal must be heard and disposed of by all the judges of the court mentioned in the Ecclesiastical Jurisdiction Measure 1963 s 3(2)(a), (b) and (c) (see PARA 1285): 2003 Measure s 20(2).

6 Ie SI 2005/3201 Schedule form A1 or A2.

7 Ibid rr 5, 6. The appellant may not, without permission from the Dean of the Arches and Auditor or the appellate court, be entitled on the hearing of the appeal to challenge any findings of the tribunal not set out in the notice of appeal: r 20.

8 Ibid r 7.

9 Ibid r 8. However, the respondent or the designated officer may seek permission from the Dean of the Arches and Auditor (see PARA 1286) to appeal out of time, and such an application is to be in form A3 (set out in the Schedule), adapted as appropriate: see r 9.

10 Ibid r 11(1). The overriding objective is to enable appeals in disciplinary proceedings under the 2003 Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised: see SI 2005/3201 rr 1, 2. The provincial registrar may at any stage refer any matter of difficulty or dispute to the Dean of the Arches and Auditor: r 11(2). Directions may be given or varied at any stage at a hearing or in writing: see rr 11(3)-(6), 12.

11 See ibid r 15.

12 See ibid r 19.

13 See ibid r 13.

14 See ibid r 14.

15 See ibid r 21.

16 See ibid r 24.

17 See ibid r 36.

- 18 See *ibid* r 37.
- 19 See *ibid* rr 17, 18.
- 20 See *ibid* rr 16, 22, 23.
- 21 See *ibid* r 25.
- 22 See *ibid* rr 26, 31.
- 23 See *ibid* r 29.
- 24 *Ibid* r 27(a).
- 25 *Ibid* r 27(b).
- 26 *Ibid* r 27(c).
- 27 *Ibid* r 27(d).
- 28 Is a penalty (or more of than one penalty) under the 2003 Measure s 24 (see PARA 1350B.1).
- 29 SI 2005/3201 r 27(e). Where the appellate court proposes to exercise its powers under r 27(d) or (e), it may invite the appropriate bishop or archbishop to express his views as to the appropriate penalty: see r 28.
- 30 See *ibid* rr 30, 32. As to orders for the payment of costs by the respondent, see r 34.

3. Removal of prohibitions and deposition, and restoration on pardon

Where by virtue of anything done under the Clergy Discipline Measure 2003 or the Ecclesiastical Jurisdiction Measure 1963 a priest or deacon is prohibited for life¹ or deposed² he may make an application to the archbishop concerned for the prohibition or deposition to be nullified³ on the grounds (1) that new evidence has come to light affecting the facts on which the prohibition or deposition was based⁴; or (2) that the proper legal procedure leading to the prohibition or deposition was not followed⁵. On such an application, if the archbishop considers that the prohibition or deposition was not justified he may, after consultation with the Dean of the Arches and Auditor, declare that the prohibition or deposition be nullified, whereupon it must be treated for all purposes in law as never having been imposed⁶. Corresponding provision applies, *mutatis mutandis*, in relation to archbishops and bishops who have been prohibited for life or deposed⁷.

Where an archbishop, bishop, priest or deacon is prohibited from exercising functions for a specific time he and the archbishop or bishop of the province or diocese concerned (or his successor in office) acting jointly may make an application to the Dean of the Arches and Auditor sitting with the two Vicars-General for the removal of the prohibition; and on receiving such an application they may make an order removing the prohibition, whereupon he is eligible for any preferment⁸.

Where an archbishop, bishop, priest or deacon is prohibited from exercising functions or removed from office his incapacities cease if he receives a free pardon from the Crown and he must be restored to any preferment he previously held if it has not in the meantime been filled⁹.

- 1 See PARA 1350B.1.
- 2 As to deposition under the Ecclesiastical Jurisdiction Measure 1963 see PARA 1375.
- 3 Clergy Discipline Measure 2003 s 26(1).
- 4 *Ibid* s 26(1)(a).

5 Ibid s 26(1)(b). As to the form of an application see the Clergy Discipline Rules 2005, SI 2005/2022, rr 97(1), 98(1).

6 2003 Measure s 26(2).

7 See ibid s 26(3). See further SI 2005/2022 rr 97(2)-(4), 98(2), (3).

8 2003 Measure s 27. See also SI 2005/2022 rr 99, 100.

9 2003 Measure s 28. For the meaning of 'preferment' see PARA 1350C.6.

4. Compensation

Any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under the Clergy Discipline Measure 2003 and subsequently revoked on appeal is entitled to compensation¹.

1 Clergy Discipline Measure 2003 s 41. The Pastoral Measure 1983 Sch 4 (see PARAS 888-891) applies in relation to such a person as to an incumbent of a benefice deemed to be vacated by virtue of s 25 of that Measure: 2003 Measure s 41.

5. Sentences and orders imposed by secular courts: priests and deacons

If a person who is a priest or deacon (1) is convicted (whether in England or elsewhere) of an offence and a sentence of imprisonment (including one which is not implemented immediately) is passed on him, or (2) has a decree of divorce or an order of separation made against him following a finding of adultery, behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent or desertion and, in the case of divorce, the decree has been made absolute, he is liable without further proceedings to a penalty of removal from office or prohibition (whether for life or limited) or both¹. Where a person is thus liable to such a penalty and the bishop of the relevant diocese² proposes to impose such a penalty, he must, after consultation with the president of tribunals³, inform that person in writing of the proposal, together with an invitation to send representations in writing to the bishop within the period of 28 days. On the expiry of that period the bishop must decide whether or not to impose the penalty and must inform that person in writing of the decision. If the decision is to impose the penalty, that person may request the archbishop of the relevant province to review the decision and on such a review the archbishop may uphold or reverse the decision after consideration of all the circumstances, including any representations made⁴. Where such a penalty is to be imposed, it must be imposed by the bishop of the relevant diocese⁵, and before imposing it the bishop must require the registrar of his diocese to give (if it is practicable to do so) not less than 14 days notice in writing to the priest or deacon concerned of the time and place at which the penalty will be imposed and if the priest or deacon appears at that time and place he is entitled to be present when the penalty is imposed⁶.

Such a penalty may not be imposed after the expiry of the period of two years beginning with the date on which the sentence becomes conclusive or, as the case may be, the decree absolute or order is made⁷.

Where a penalty of removal from office or prohibition is imposed on any person pursuant to the provisions described above the penalty has effect subject to the provisions relating to penalties generally⁸, and the like consequences ensue in all respects as if such person had been found to have committed misconduct such a penalty had been imposed on him⁹.

1 Clergy Discipline Measure 2003 s 30(1). As to those penalties see PARA 1350B.1. Where a priest or deacon is liable to a penalty of prohibition or removal from office, or both, in accordance with head (1), the bishop must not propose to impose any penalty until the conviction has become conclusive and the court has sent to the

bishop the certificate of conviction in the form used by the court for that purpose: Clergy Discipline Rules 2005, SI 2005/2022, r 67. As to when convictions become conclusive see PARA 1350A.3 NOTE 1. See also rr 81, 89.

2 'Relevant diocese' means (a) the diocese in which the priest or deacon in relation to whom a penalty may be imposed holds preferment at the date on which the sentence which justifies the imposition of the penalty becomes conclusive; or (b) if at that date he is not holding preferment, but is residing in a diocese, the diocese in which he is residing at that date; or (c) if at that date he neither holds preferment nor resides in a diocese, the diocese in which he last held preferment before that date or, in the case of a priest or deacon who has not held preferment in any diocese, the diocese in which he was ordained: 2003 Measure s 30(7). For the meaning of 'preferment' see PARA 1350C.6.

3 As to the president of tribunals see PARA 1350C.5.

4 2003 Measure s 30(2); SI 2005/2022 rr 68, 69(a). If the decision is to impose the penalty, the bishop must inform the priest or deacon that an application may be made to the archbishop to review the decision: r 69(b). See further rr 70-73, 81, 89, 90. The functions exercisable by an archbishop are, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, exercisable by the other archbishop: 2003 Measure s 30(6).

5 When imposing such a penalty the bishop must be attended by the registrar of his diocese: *ibid* s 30(5). The penalty must be reduced to writing and a copy sent to the archbishop of the province concerned and to the registrar of the diocese concerned: s 30(5).

6 *Ibid* s 30(4).

7 *Ibid* s 30(3). As to when convictions and proceedings become conclusive see PARA 1350A.3 NOTE 1.

8 *See* *ibid* ss 24-29: see PARAS 1350B.1, 1350B.3.

9 *Ibid* s 32. For the meaning of 'misconduct' see PARA 1350A.1.

6. Sentences and orders imposed by secular courts: bishops and archbishops

If a person who is a bishop¹ or archbishop (1) is convicted (whether in England or elsewhere) of an offence and a sentence of imprisonment (including one which is not implemented immediately) is passed on him, or (2) has a decree of divorce or an order of separation made against him following a finding of adultery, behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent or desertion and, in the case of divorce, the decree has been made absolute, he is liable without further proceedings to a penalty of removal from office or prohibition (whether for life or limited) or both². Where a person is thus liable to such a penalty and the archbishop concerned proposes to impose such a penalty, he must, after consultation with the president of tribunals³, inform that person in writing of the proposal, together with an invitation to send representations in writing to the archbishop within the period of 28 days. On the expiry of that period the archbishop must decide whether or not to impose the penalty and must inform that person in writing of the decision. If the decision is to impose the penalty, that person may (a) if he is a bishop, request the other archbishop, or (b) if he is an archbishop, request the president of tribunals, to review the decision and on such a review the archbishop or president of tribunals, as the case may be, may uphold or reverse the decision after consideration of all the circumstances, including any representations made⁴. Where such a penalty is to be imposed, it must be imposed (i) in the case of a bishop, by the archbishop⁵ of the relevant province after consultation with the two senior diocesan bishops of the province, and (ii) in the case of a person who is an archbishop, by the other archbishop after consultation as mentioned above⁶.

Such a penalty may not be imposed after the expiry of the period of two years beginning with the date on which the sentence becomes conclusive or, as the case may be, the decree absolute or order is made⁷.

Where a penalty of removal from office or prohibition is imposed on any person pursuant to the provisions described above the penalty has effect subject to the provisions relating to penalties

generally⁸, and the like consequences ensue in all respects as if such person had been found to have committed misconduct such a penalty had been imposed on him⁹.

1 'Bishop' here means any diocesan bishop, any suffragan bishop and any other bishop: Clergy Discipline Measure 2003 s 31(7).

2 Ibid s 31(1). As to those penalties see PARA 1350B.1.

3 As to the president of tribunals see PARA 1350C.5.

4 2003 Measure s 31(2). The functions exercisable by the archbishop of the relevant province are, during his absence abroad or incapacity through illness or a vacancy in the see, exercisable by the other archbishop: s 31(6).

5 When imposing such a penalty the archbishop must be attended by the registrar of his province. The penalty must be reduced to writing and a copy recorded in the registry of the province concerned and sent to the archbishop concerned: ibid s 31(5).

6 Ibid s 31(4).

7 Ibid s 31(3). As to when convictions and proceedings become conclusive see PARA 1350A.3 NOTE 1.

8 Ie ibid ss 24-29: see PARAS 1350B.1, 1350B.3.

9 Ibid s 32. For the meaning of 'misconduct' see PARA 1350A.1.

7. Archbishops' list

It is the duty of the archbishops acting jointly to compile and maintain a list of all clerks in Holy Orders (1) on whom a penalty or censure (by consent or otherwise) has been imposed under the Clergy Discipline Measure 2003 Measure or the Ecclesiastical Jurisdiction Measure 1963¹; or (2) who have been deposed from Holy Orders under the 1963 Measure²; or (3) who have executed a deed of relinquishment under the Clerical Disabilities Act 1870³; or (4) who have resigned preferment following the making of a complaint in writing against them under the 2003 Measure or the 1963 Measure⁴; or (5) who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment⁵.

Where the archbishop has included a person falling within heads (1) to (4) above in the list he must take all reasonable steps to inform that person in writing that he has done so and of the particulars recorded in respect of that person. That person may request the president of tribunals⁶ to review the matter and on such a review the president of tribunals must direct that that person should continue to be included in the list or should be excluded therefrom and, in the former case, may also direct that the particulars relating to that person should be altered in such manner as may be specified⁷.

Where the archbishop proposes to include a person falling within head (5) above in the list he must take all reasonable steps to inform that person in writing of the proposal and the particulars to be recorded, together with an invitation to send comments or representations in writing to the archbishop within the period of 21 days. On the expiry of that period the archbishop must decide whether or not to include that person in the list and inform that person in writing of his decision. If the decision is to include that person in the list that person may request the president of tribunals to review the decision and on such a review the president of tribunals may uphold or reverse the decision⁸.

The archbishop must review the inclusion of a person in the list, in such manner as may be prescribed, on the expiry of the period of five years following the inclusion and also if requested to do so by that person or by the bishop of a diocese⁹. However, that person is not entitled to

make such a request within that period of five years nor within the period of five years following any previous review¹⁰.

- 1 Clergy Discipline Measure 2003 s 38(1)(a). As to penalties under the 2003 Measure see PARA 1350B.1.
- 2 Ibid s 38(1)(b). As to deposition under the 1963 Measure see PARA 1375.
- 3 2003 Measure s 38(1)(c). See PARAS 686-688.
- 4 Ibid s 38(1)(d). As to complaints see s 10(1); and PARA 1350A.3. For the meaning of 'preferment' see PARA 1350C.6.
- 5 2003 Measure s 38(1)(e). There is to be a single list compiled and maintained jointly by the archbishops for the purposes specified in s 38(1): Clergy Discipline Rules 2005, SI 2005/2022, r 74(1). The list is to be in the custody of the Archbishop of Canterbury and a copy of the list is to be in the custody of the Archbishop of York: r 74(1), (2). Until proceedings on an appeal have been disposed of, no further steps may be taken under the 2003 Measure s 38 to record the penalty in the archbishops' list: Clergy Discipline Appeal Rules 2005, SI 2005/3201, r 10(3).
- 6 As to the president of tribunals see PARA 1350C.5. For the meaning of 'misconduct' see PARA 1350A.1.
- 7 2003 Measure s 38(2). See also SI 2005/2022 r 75. In the case of the inclusion of a person in the list under head (4) or (5), a bishop of a diocese may request a review of the inclusion: r 79.
- 8 2003 Measure s 38(3). See also SI 2005/2022 r 76.
- 9 2003 Measure s 38(4). See also SI 2005/2022 rr 77, 78.
- 10 2003 Measure s 38(4) proviso. See also SI 2005/2022 r 80.

8. Duty to disclose criminal convictions and arrests, and divorce and separation orders

A person in Holy Orders who (whether in England or elsewhere) is convicted of an offence or is arrested on suspicion of committing an offence is under a duty, within the period of 28 days following the conviction or arrest, (1) in the case of a priest or deacon, to inform the bishop of the diocese concerned, (2) in the case of a bishop, to inform the archbishop concerned, and (3) in the case of an archbishop, to inform the other archbishop, of the conviction or arrest¹. This applies to a person in Holy Orders in respect of whose marriage a decree nisi of divorce has been made absolute or an order of judicial separation has been made as it applies to a person who is convicted of an offence².

Failure to comply with this requirement is regarded³ as a failure to do an act required by the laws ecclesiastical⁴.

- 1 Clergy Discipline Measure 2003 s 33(1).
- 2 Ibid s 34.
- 3 Ie for the purposes of ibid s 8(1): see PARA 1350A.1.
- 4 Ibid s 33(2).

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1350C. Disciplinary jurisdiction in relation to misconduct.

1. Exercise of functions in relation to discipline of clergy

Any body or person on whom functions in connection with the discipline of persons in Holy Orders are conferred by the Clergy Discipline Measure 2003 must, in exercising those functions, have due regard to the role in that connection of the bishop or archbishop who, by virtue of his office and consecration, is required to administer discipline¹. Where a complaint is to be referred under that Measure to a disciplinary tribunal the tribunal (to be called the bishop's disciplinary tribunal) must be constituted for the diocese in question² to deal with the complaint³.

A Clergy Discipline Commission is established to exercise functions conferred by that Measure⁴, and to (1) give general advice to disciplinary tribunals, the courts of the Vicars-General, bishops and archbishops as to the penalties which are appropriate in particular circumstances⁵; (2) issue codes of practice⁶ and general policy guidance to persons exercising functions in connection with clergy discipline⁷; and (3) make annually to the General Synod through the House of Bishops a report on the exercise of its functions during the previous year⁸.

1 Clergy Discipline Measure 2003 s 1 (not yet in force).

2 *Ibid* s 22: see PARA 1350C.3.

3 *Ibid* s 2 (not yet in force).

4 *Ibid* s 3(1), (3). The Commission must consist of not more than 12 persons appointed by the Appointments Committee of the Church of England including at least two persons from each House of the General Synod; and two persons who have either a seven years general qualification within the meaning of the Courts and Legal Services Act 1990 or who have held or are holding high judicial office or the office of Circuit judge: 2003 Measure s 3(1). The Appointments Committee must, after consultation with the Dean of the Arches and Auditor, appoint members of the Commission to be chairman and deputy chairman, being members who satisfy the qualification or judicial office requirements referred to above: s 3(2).

5 *Ibid* s 3(3)(a).

6 It is the duty of the Clergy Discipline Commission to formulate guidance for the purposes of the 2003 Measure generally and, with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice: s 39(1). The Commission may at any time amend or replace such a Code of Practice by a further Code of Practice duly issued: s 39(2). A Code of Practice must be laid before the General Synod and does not come into force until approved by the General Synod, whether with or without amendment: s 39(3). Where the Business Committee of the General Synod determines that a Code of Practice does not need to be debated by the General Synod then, unless (1) notice is given by a member of the General Synod in accordance with its standing orders that he wishes the Code to be debated, or (2) notice is so given by any such member that he wishes to move an amendment to the Code, the Code is deemed to have been approved by the General Synod without amendment: s 39(4).

7 *Ibid* s 3(3)(b).

8 *Ibid* s 3(3)(b).

2. Constitution of provincial panels

It is the duty of the Clergy Discipline Commission¹ to compile and maintain for each province, a list ('the provincial panel') of persons available for appointment under the Clergy Discipline Measure 2003 as members of a disciplinary tribunal or of the Vicar-General's court². Each provincial panel must contain the names of (1) two lay persons from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who are resident in the diocese and are on the electoral roll of a parish in the diocese or on the community roll of a cathedral which is not a parish church³; (2) two persons in Holy Orders from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who have served in Holy Orders for at least seven years and are resident in the diocese⁴; (3) ten persons nominated by the archbishop of the relevant province, being persons who have a seven year general qualification⁵ or who have held or are holding high judicial office or the office of Circuit judge⁶; (4) such persons as may be nominated as described below⁷.

The archbishop of the relevant province may also nominate for inclusion on the provincial panel (a) not more than five persons who are resident in the province and are on the electoral roll of a parish in the province or on the community roll of a cathedral which is not a parish church⁸; and (b) not more than five persons who have served in Holy Orders for at least seven years and reside in the province⁹.

No person who is not an actual communicant¹⁰ may be nominated to serve on the provincial panel¹¹.

Persons serve on the provincial panel for six years, and on retiring from the panel are eligible to be nominated to serve for not more than one further period of six years¹².

1 As to the Clergy Discipline Commission see PARA 1350C.1.

2 Clergy Discipline Measure 2003 s 21(1). As to disciplinary tribunals see PARA 1350C.3. As to the Vicar-General's court see PARA 1350C.4.

3 Ibid s 21(2)(a).

4 Ibid s 21(2)(b).

5 Ie within the meaning of the Courts and Legal Services Act 1990 s 71.

6 2003 Measure s 21(2)(c).

7 Ibid s 21(2)(d).

8 Ibid s 21(3)(a).

9 Ibid s 21(3)(b).

10 Ie within the meaning of the Church Representation Rules r 54(1): see PARA 420.

11 2003 Measure s 21(4).

12 See ibid s 21(5). As to the initial period of service after the coming into force of these provisions see s 21(5) proviso. Where the period of a person's service expires while he is a member of a disciplinary tribunal or of the Vicar-General's court to which proceedings are referred, he continues to be a member of the tribunal or court until the completion of the proceedings: s 21(6). As to casual vacancies on the provincial panel see s 21(7), (8).

3. Constitution of disciplinary tribunals

A disciplinary tribunal must consist of five members, comprising (1) the chairman, who must be the president of tribunals¹ or such other person as he may appoint as chairman from those nominated² to serve on the relevant provincial panel³; (2) two lay persons appointed by the

president of tribunals from those nominated⁴ otherwise than by the bishop of the diocese concerned to serve on the relevant provincial panel; and (3) two persons in Holy Orders appointed by the president of tribunals from those nominated⁵ otherwise than by the bishop of the diocese concerned to serve on the relevant provincial panel⁶.

The president of tribunals must not appoint any person to be a member of a disciplinary tribunal unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he must afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed⁷.

1 As to the president of tribunals see PARA 1350C.5.

2 He nominated under the Clergy Discipline Measure 2003 s 21(2)(c): see PARA 1350C.2.

3 As to the provincial panels see PARA 1350C.2.

4 He nominated under the 2003 Measure s 21(2)(a) or (3)(a): see PARA 1350C.2.

5 He nominated under ibid s 21(2)(b) or (3)(b): see PARA 1350C.2.

6 Ibid s 22(1).

7 Ibid s 22(2). Within 14 days of being notified under s 22(2) of the identity of the proposed members of the tribunal, the respondent may make written representations to the president of tribunals about their suitability: Clergy Discipline Rules 2005, SI 2005/2022, r 37(1). If the president of tribunals is not satisfied that a proposed appointee is impartial, he propose an alternative person: r 37(2).

4. Constitution of Vicar-General's court

When exercising its jurisdiction in disciplinary proceedings¹ under the Clergy Discipline Measure 2003 against a bishop, the Vicar-General's court consists of five members comprising (1) the chairman, who must be the Vicar-General of the relevant province unless he declares himself to be personally acquainted with the complainant or the respondent, in which case the president of tribunals² must appoint a person to be the chairman from those nominated³ to serve on the relevant provincial panel of the province other than that in which the bishop serves⁴; (2) two persons in Holy Orders (one of whom must be in Episcopal Orders) appointed by the president of tribunals⁵; (3) two lay persons appointed by the president of tribunals from among those nominated⁶ to serve on the provincial panel of the province other than that in which the bishop serves⁷.

When exercising its jurisdiction in disciplinary proceedings against an archbishop of a province, the Vicar-General's court consists of five members comprising (a) the chairman, who must be the Vicar-General of the other province unless he declares himself to be personally acquainted with the complainant or the respondent, in which case the president of tribunals must appoint a person to be the chairman from those nominated⁸ to serve on the provincial panel of the other province⁹; (2) two persons in Holy Orders (one of whom must be in Episcopal Orders) appointed by the president of tribunals¹⁰; (3) two lay persons appointed by the president of tribunals from among those nominated to serve on the provincial panel of the other province¹¹.

The president of tribunals must not appoint any person to be a member of the Vicar-General's court of a province unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he must afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed¹².

1 As to the jurisdiction of the Vicar-General's court in disciplinary proceedings under the Clergy Discipline Measure 2003 see PARA 1350C.6.

2 As to the president of tribunals see PARA 1350C.5.

3 le nominated under the 2003 Measure s 21(2)(c): see PARA 1350C.2.

4 Ibid s 23(1)(a).

5 Ibid s 23(1)(b).

6 le nominated under ibid s 21(2)(a) or (3)(a): see PARA 1350C.2.

7 Ibid s 23(1)(c).

8 le nominated under ibid s 21(2)(c): see PARA 1350C.2.

9 Ibid s 23(2)(a).

10 Ibid s 23(2)(b).

11 Ibid s 23(2)(c).

12 Ibid s 23(3).

5. President and registrar of tribunals

The chairman and deputy chairman of the Clergy Discipline Commission are the president and deputy president of tribunals respectively¹. The president of tribunals has the functions conferred on him by the Clergy Discipline Measure 2003, and the additional duties of (1) issuing practice directions; (2) acting as the chairman of a disciplinary tribunal where, in his opinion, important points of law or principle are involved; and (3) exercising such other functions as may be prescribed².

The archbishops of Canterbury and York must each, after consultation with the president of tribunals, appoint a person to be the registrar of tribunals for his province³. The registrar has the functions conferred on him by the Clergy Discipline Measure 2003, and the additional duties of (a) directing and supervising the general administration of disciplinary tribunals in the province; and (b) exercising such other functions as may be prescribed⁴.

1 Clergy Discipline Measure 2003 s 4(1).

2 Ibid s 4(2). The deputy president acts for the president when the president is absent or is unable or unwilling to act: s 4(3). As to disciplinary tribunals see PARA 1350C.3.

3 Ibid s 5(1). A person so appointed must have a general qualification within the meaning of the Courts and Legal Services Act 1990: 2003 Measure s 5(2). The registrar of tribunals must vacate that office on the date on which he reaches 70 or such earlier age as may be prescribed by regulations made by the House of Bishops of the General Synod under the Ecclesiastical Judges and Legal Officers Measure 1976 s 5: 2003 Measure s 5(3). As to the resignation of the registrar see s 5(4); as to the termination of the appointment of the registrar see s 5(5).

4 Ibid s 5(6). If the person holding the office of registrar of tribunals for a province is for any reason unable or unwilling to perform the duties of a registrar or it would be inappropriate for him to perform those duties, the registrar of tribunals for the other province must perform those duties and, for that purpose, has all the powers and duties of the registrar of the first-mentioned province: s 5(7).

6. Jurisdiction in disciplinary proceedings

A disciplinary tribunal¹ constituted for a diocese has jurisdiction to hear and determine disciplinary proceedings under the Clergy Discipline Measure 2003 against a priest or deacon who, when the misconduct complained of was alleged to have been committed, held preferment² in the diocese or, subject to an exception³, was resident therein; or who is alleged to have officiated as a minister in the diocese without authority⁴.

The Vicar-General's court of each of the provinces of Canterbury and York constituted in accordance with the provisions of the 2003 Measure has jurisdiction to hear and determine disciplinary proceedings under that Measure against any bishop who, when the misconduct complained of was alleged to have been committed, held preferment in the province or, subject to an exception⁵, was resident therein; or any bishop who is alleged to have officiated as a minister in the province without authority; or against the archbishop of the other province⁶.

1 As to disciplinary tribunals see PARA 1350C.3.

2 'Preferment' includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty: Clergy Discipline Measure 2003 s 43(1).

3 Where disciplinary proceedings in respect of any matter are instituted under *ibid* s 10 (see PARA 1350A.3) against a priest or deacon in the diocese in which he holds or held preferment or in which he is alleged to have officiated as a minister without authority, no such proceedings in respect of the same matter may be instituted in any other diocese on the basis of residence therein and any such proceedings previously instituted on that basis must be discontinued: s 6(3).

4 *Ibid* s 6(1). Where disciplinary proceedings in respect of any matter are instituted under s 10 (see PARA 1350A.3) against a priest or deacon in the diocese in which he is alleged to have officiated without authority, no such proceedings in respect of the same matter may be instituted in any other diocese, on the basis of preferment therein and any such proceedings previously instituted on that basis must be discontinued: s 6(4).

5 Where disciplinary proceedings in respect of any matter are instituted under *ibid* s 10 (see PARA 1350A.3) against a bishop in the province in which he holds or held preferment or in which he is alleged to have officiated without authority, no such proceedings in respect of the same matter may be instituted in the other province on the basis of residence therein and any such proceedings previously instituted on that basis must be discontinued: s 6(3).

6 *Ibid* s 6(2). Where disciplinary proceedings in respect of any matter are instituted under s 10 (see PARA 1350A.3) against a bishop in the province in which he is alleged to have officiated without authority, no such proceedings in respect of the same matter may be instituted in the other province on the basis of preferment therein and any such proceedings previously instituted on that basis must be discontinued: s 6(4).

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1351. Persons subject to disciplinary jurisdiction.

Proceedings may be instituted under the Ecclesiastical Jurisdiction Measure 1963 against an archbishop, any diocesan bishop, any suffragan bishop commissioned by a diocesan bishop or any other bishop or a priest or deacon who, when the offence was alleged to have been committed or when the proceedings are instituted, held or holds preferment in any diocese or resided or resides there¹.

It seems that all lay persons including such office holders as churchwardens, deaconesses, readers and lay chancellors, are outside the criminal jurisdiction of ecclesiastical courts².

Nothing in the Measure authorises proceedings against a holder of an office in a royal peculiar³.

1 Ecclesiastical Jurisdiction Measure 1963, s 17. For the meaning of 'preferment', see PARA 1290 note 1 ante.

2 See PARA 1350 ante; see also *ibid* s 82 (2) (c), which abolished the jurisdiction of consistory courts to hear and determine proceedings against lay officers of a church. Conflicting views have, however, been expressed as to the liability of lay officers: see Dale, *Law of the Parish Church* (4th Edn) 113; Garth Moore, *An Introduction to English Canon Law* (1967) 126. As to actions for damages against chancellors, see PARA 1268 note 6 ante.

3 Ecclesiastical Jurisdiction Measure 1963, s 83 (3). This is expressed to be subject to the Ecclesiastical Commissioners Act 1840, s 29, which make special provision in respect of rectories annexed to canonries of Westminster.

UPDATE

1351 Persons subject to disciplinary jurisdiction

TEXT AND NOTE 3--1963 Measure s 83(3) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(i) In general/1352. Offences against the laws ecclesiastical.

1352. Offences against the laws ecclesiastical.

The offences in respect of which proceedings may be instituted by way of a criminal suit in an ecclesiastical court are divided into two categories¹: (1) offences against the laws ecclesiastical involving matter of doctrine, ritual or ceremonial²; and (2) any other offences against the laws ecclesiastical³. The latter category includes, but is not limited to, (a) conduct unbecoming the office and work of a clerk in holy orders⁴; and (b) serious, persistent or continuous neglect of duty⁵.

The expression 'offences against the laws ecclesiastical'⁶ includes statutory offences (namely offences under relevant Acts of Parliament and under Measures of the Church Assembly or General Synod), offences under the common law of the realm in matters ecclesiastical, and breaches of post-Reformation canons⁷.

1 This distinction is important for various purposes: eg jurisdiction (see PARAS 1284, 1287, 1288, 1290-1292, 1350 ante), procedure (see PARA 1362 et seq post), censures (see PARA 1372 et seq post) and the application of the doctrine of precedent (see PARA 1271 ante).

2 Ecclesiastical Jurisdiction Measure 1963, s 14 (1) (a). Jurisdiction in respect of offences involving matter of doctrine, ritual or ceremonial is exercisable at first instance by the Court of Ecclesiastical Causes Reserved (see PARA 1290 ante). In some cases the element of doctrine etc. may constitute the main substance of the offence (see eg paras 1354, 1355 post); in other cases, it seems, it may be incidentally involved, but cf. *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 164, 165, [1972] 1 All ER 1012 at 1016, 1017. Proceedings in respect of such offences may be instituted only if the offence was committed within the province of Canterbury or York: see PARA 1350 ante. The Court of Ecclesiastical Causes Reserved is not bound by any decision of the Judicial Committee of the Privy Council in relation to matter of doctrine, ritual or ceremonial: see PARA 1271 ante.

3 Ecclesiastical Jurisdiction Measure 1963, s 14 (1) (b). Jurisdiction in respect of these offences is exercisable at first instance by the consistory court of the diocese in the case of priests or deacons (see PARA 1284 ante), by a commission of the convocation of the province in the case of a bishop or by a commission of both convocations in the case of an archbishop (see PARA 1291 ante). There is no limitation in respect of the place where the offence was committed (see PARA 1350 ante).

4 Ibid s 14 (1) (b) (i): see PARA 1356 post.

5 Ibid s 14 (1) (b) (ii): see PARA 1357 post.

6 The Ecclesiastical Jurisdiction Measure 1963 frequently uses also the expression 'offences under this Measure': see eg ss 6 (1), 18, 24 (1), 33 (2), 42 (2), 49, 54, and the titles to Parts II to VI. It is, it seems, to be interpreted, not as applying only to offences created or defined by the Measure, but as including all offences against the laws ecclesiastical which are cognisable under the Measure: see the title to Part II ('Offences Cognisable under the Measure and Provisions as to Persons Chargeable therewith').

7 See PARA 305 et seq ante. As to post-Reformation canons, see in particular para 308 ante.

UPDATE

1352 Offences against the laws ecclesiastical

TEXT AND NOTES 3-5--Repealed: Clergy Discipline Measure 2003 Sch 2. Jurisdiction over proceedings for misconduct is exercised by disciplinary tribunals or the Vicar-General's Court, under the Clergy Discipline Measure 2003: see PARA 1350A et seq.

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1353. Ecclesiastical offences by clergy generally.

Generally all violations of church order and breaches of the canons and other laws ecclesiastical, and disobedience to the lawful commands of the bishop, on the part of the clergy are ecclesiastical offences and punishable as such¹. They include numerous offences which were formerly cognisable under enactments now repealed². Except where a contrary intention appears the repeal of these enactments does not affect the existence of any corresponding offences which are recognised by the common law in matters ecclesiastical³. There are still certain offences which are cognisable both under statutory provisions and at common law, for example some instances of conduct unbecoming the office and work of a clerk in holy orders⁴, and serious, persistent and continuous neglect of duty⁵.

1 Ayl Par 208; Godolphin's Repertorium Canonicum 306, 307; *Philips v Bury* (1694) 1 Ld Raym 5 at 9; *Rugg v Bishop of Winchester* (1868) LR 2 PC 223 at 235, 236; *Combe v De la Bere* (1881) 6 PD 157 at 163-166, 169, 170. As to canonical obedience, see PARA 660 note 10 ante.

2 Eg the Church Discipline Act 1840; Public Worship Regulation Act 1874; Clergy Discipline Act 1892; and Incumbents (Discipline) Measures 1947 to 1953 (namely the Incumbents (Discipline) Measure 1947; Incumbents (Discipline) Measures 1947 (Amendment) Measure 1950; Incumbents (Discipline) and Church Dignitaries (Retirement) Amendment Measure 1953) (all repealed by the Ecclesiastical Jurisdiction Measure 1963: see s 87, Sch. 5).

3 See *ibid* s 14 (2), which declares that the repeal by the Measure of any statutory provision under which proceedings could have been taken for an offence against the law ecclesiastical does not prevent the taking of any proceedings under the Measure in respect of any such offence.

4 See PARA 1356 post.

5 See PARA 1357 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1354. Offences relating to doctrine.

(ii) Offences Cognisable by the Courts

1354. Offences relating to doctrine.

Offences involving matter of doctrine¹ have generally been held to comprise heresy², avowing blasphemous³ and impious opinions contrary to the Christian religion⁴, depraving⁵ the Book of Common Prayer, and maintaining doctrines repugnant to the Thirty-Nine Articles of Religion. It seems that, notwithstanding the repeal of certain relevant enactments, these are still cognisable as common law offences⁶. For an indication of the doctrinal standards which are capable of being thus enforced, reference may be made to the declaration contained in the canons that the doctrine of the Church of England is grounded in the holy scriptures and in such teachings of the ancient fathers and councils of the church as are agreeable to the scriptures, and that in particular such doctrine is to be found in the Thirty-Nine Articles, the Book of Common Prayer, and the Ordinal⁷.

There are, however, many points of doctrine which the church has not decided and which are open to every member of the church to decide for himself according to his own conscientious opinion⁸, and the general effect of recent legislation has clearly been to give the clergy, among others, a greater liberty of interpretation than the law had allowed in the past with respect to the church's formularies⁹.

1 See the Ecclesiastical Jurisdiction Measure 1963, s 14 (1) (a), and PARA 1352 note 2 ante.

2 Heresy may be described as a false opinion repugnant to some point of doctrine clearly revealed in scripture and either absolutely essential to the Christian faith or at least of most high importance: see 2 Burn's Ecclesiastical Law (4th Edn) 304, 305. In law heresy is only that which has, before 1559, been adjudged to be heresy by the authority of the canonical scriptures, or by any of the first four General Councils, or by any other General Council in which the same was declared heresy by the express words of the canonical scriptures or which, since 1559, may have been or may be determined to be heresy by Parliament with the assent of the clergy in convocation: see the Act of Supremacy 1558, s 20 (repealed by the Statute Law Revision Act 1863 with a saving of any principle or rule of law or equity affirmed, recognised or derived by, in or from any enactment thereby repealed: s 1). Articles charging a clergyman with heresy must distinctly state the obnoxious opinions and the exact terms in which he is alleged to have uttered or published them: *Williams v Bishop of Salisbury* (1864) 2 Moo PCCNS 375 at 423.

3 As to blasphemy as an offence cognisable in the temporal courts, see 4 Bl Com (14th Edn) 59; *R v Ramsay and Foote* (1883) 48 LT 733; *R v Boulter* (1908) 72 JP 188; *Bowman v Secular Society Ltd* [1917] AC 406, HL, and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 826.

4 Eg by a public statement in a sermon or book: see *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 165, [1972] 1 All ER 1012 at 1017.

5 Ie depraving in the archaic sense of vilifying, defaming or treating with contempt.

6 Reported judicial decisions on these matters relate mainly to cases brought under former statutory provisions now repealed: cf. Phillimore, Ecclesiastical Law (2nd Edn) 842 et seq. In applying these statutory provisions the courts were usually disposed to allow a reasonable latitude in the interpretation of the Church's formularies: see eg *HM Procurator General v Stone* (1808) 1 Hag Con 424. It is likely that this tendency would be still more pronounced at the present day, especially in regard to the Thirty-Nine Articles: see note 9 infra.

7 Revised Canons Ecclesiastical, Canon A 5. See also the Church of England (Worship and Doctrine) Measure 1974, s 5 (1). As to the Ordinal, cf. Revised Canons Ecclesiastical, Canon A4, which refers to the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons as being 'annexed to the Book

of Common Prayer and commonly known as the Ordinal', whereas the Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 3 (repealed), described it as being 'contained in' the Book of Common Prayer.

8 *Gorham v Bishop of Exeter* (1850) Moore's Special Report 462, PC.

9 See the Church of England (Worship and Doctrine) Measure 1974, s 4, which makes provision for the safeguarding of doctrine and directs that canons and regulations shall be 'neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter'. See also ss 2, 5 (1); and Revised Canons Ecclesiastical, Canon C15 (substituted by amending Canon No. 4), and PARA 660 ante. Much of the previous case law relating to such matters as the construction of the Thirty-Nine Articles must now be regarded as inapplicable.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1355. Offences relating to ritual and ceremonial.

1355. Offences relating to ritual and ceremonial.

Statutory provisions respecting ecclesiastical discipline in ritual and ceremonial matters¹ have largely been repealed, but in these matters, as in matters of doctrine, common law offences are still cognisable by the ecclesiastical courts². Any contravention of the law as to conformity of worship³ (for example the use of services not duly authorised by canon) is *prima facie* an ecclesiastical offence⁴. Illegal ceremonial practices and the introduction or use of illegal ornaments⁵ may likewise constitute ecclesiastical offences⁶.

1 In particular the Public Worship Regulation Act 1874 (repealed by the Ecclesiastical Jurisdiction Measure 1963, s 87, Sch. 5).

2 See PARA 1353 ante.

3 See the Revised Canons Ecclesiastical, Canons B1-B5 (amended by Amending Canons Nos. 1, 3), and PARA 934 et seq ante.

4 See PARA 1352 note 2 ante, which applies equally to the offences mentioned in this paragraph.

5 See PARA 953 et seq ante. If, in default of proceedings under the faculty jurisdiction for the removal of an illegal ornament, the bishop at a special visitation orders the removal, the breach of such an order can be punished under the Ecclesiastical Jurisdiction Measure 1963: see *Opinions of the Legal Board* (5th Edn 1973) III/47.

6 See PARA 1352 note 2 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1356. Offences relating to the conduct of ministers.

1356. Offences relating to the conduct of ministers.

Conduct unbecoming the office and work of a clerk in holy orders is recognised by the Ecclesiastical Jurisdiction Measure 1963 as an offence against the laws ecclesiastical for which proceedings may be instituted under the Measure¹, but no proceedings for this offence may be taken against any person in respect of his political opinions or activities².

There is no statutory definition of unbecoming conduct for this purpose³, but it would appear to cover any such acts, conduct or habits as would contravene the provisions of the canons as to the manner of life of the clergy⁴. While these provisions are less specific in their terms than those of an earlier period⁵ it is plain that their general intention and effect are similar, namely to proscribe all conduct of a dishonest, immoral or disorderly nature, whether or not it constitutes also a temporal offence. Among acts which have been held to be offences against the laws ecclesiastical are drunkenness⁶, frequenting alehouses and tippling⁷, incontinence⁸, habitual swearing and ribaldry⁹, irreverent language in the pulpit¹⁰, writing a rude letter to a parishioner¹¹ or an obscene letter to an unmarried woman¹², the solicitation of chastity¹³, the collection of alms on false pretences¹⁴, the forgery of orders¹⁵ and cruelty to a servant¹⁶.

If an act or omission is itself an ecclesiastical offence it seems that it should be charged as such and not as unbecoming conduct¹⁷.

1 Ecclesiastical Jurisdiction Measure 1963, s 14 (1) (b) (i). As to the persons subject to the jurisdiction, see s 17, and PARA 1351 ante.

2 Ibid s 14 (1) proviso.

3 The corresponding expression in the Incumbents (Discipline) Measure 1947, s 2 (repealed), was 'conduct unbecoming the character of a clerk in holy orders'. This also was undefined.

4 See in particular the Revised Canons Ecclesiastical, Canon C26 para 2, and PARA 681 ante. Unbecoming conduct may, however, include conduct proscribed by the general ecclesiastical law apart from the canons: see *Bishop of Ely v Close* [1913] P 184 at 193.

5 Among the things forbidden to ministers by the Canons Ecclesiastical (1603) were resorting to taverns or alehouses (other than for their honest necessities), drinking or riot, spending their time idly by day or by night, playing at dice, cards or tables or other unlawful games (Canon 75 (repealed)); and offending their brethren by adultery, whoredom, incest, drunkenness, swearing, ribaldry, usury and any other uncleanness and wickedness of life (Canon 109 (repealed)).

6 *Burder v Speer* (1841) 1 Notes of Cases 39; *Bishop of Rochester v Harris* [1893] P 137; *Marriner v Bishop of Bath and Wells* (1878) 42 JP 436, PC.

7 *Gwyn v Watkins* (1700) Rothery's Precedents, No. 106, p. 51.

8 *Rich v Gerard and Loder* (1690) 1 Hag Ecc, App B7; *Dargavell v Langdon* (1678) Rothery's Precedents, No. 68, p. 31; *Free v Burgoyne* (1828) 2 Bli NS 65, HL; *Kitson v Loftus* (1845) 4 Notes of Cases 323; *Bonwell v Bishop of London* (1861) 14 Moo PCC 395.

9 *Moore v Bishop of Oxford* [1904] AC 283, PC.

10 *Burder v Hale* (1849) 6 Notes of Cases 611 at 630, 631.

11 *Bland v Archdeacon of Cheltenham* [1972] Fam 157, [1972] 1 All ER 1012.

- 12 *Bishop of Ely v Close* [1913] P 184. An immoral act and an immoral habit are not identical: *Bishop of Ely v Close* *supra* at 196.
- 13 *Berney v Bishop of Norwich* (1867) 36 LJ Eccl 10, PC.
- 14 *Fitzmaurice v Hesketh* [1904] AC 266, PC.
- 15 *Slader v Smalbrooke* (1664) 1 Lev 138.
- 16 *Re Montgomery* (1906) Times, 12th March.
- 17 *Bland v Archdeacon of Cheltenham* [1972] Fam 157, [1972] 1 All ER 1012: see PARA 1357 text and note 5 post.

UPDATE

1356 Offences relating to the conduct of ministers

TEXT AND NOTES 1, 2--Repealed and replaced: Clergy Discipline Measure 2003 Sch 2. See now 2003 Measure s 8(1); and PARA 1350A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1357. Neglect of duty.

1357. Neglect of duty.

Serious, persistent or continuous neglect of duty¹ is expressly recognised by the Ecclesiastical Jurisdiction Measure 1963 as an offence against the laws ecclesiastical², although no proceedings for this offence may be taken against a person in respect of his political opinions³. The expression 'neglect of duty' is to be interpreted as meaning the failure without due cause to perform an ecclesiastical duty⁴. The definition of the offence suggests that it applies mainly, if not exclusively, to the case of a person who holds ecclesiastical preferment and is thereby responsible for the performance of certain duties. In many instances the neglect alleged would be recognised by the law as constituting a distinct offence in itself, and it seems that in such a case it is preferable (although not essential) that the charge should specify that particular offence rather than the general offence of neglect of duty⁵.

There is a wide range of clerical duties in respect of which culpable neglect may occur⁶, including in particular those associated with the administration of the sacraments and the performance of occasional offices. Thus it is an ecclesiastical offence to refuse to administer the Holy Communion to a confirmed parishioner who is not disqualified from receiving it⁷, or unlawfully to refuse or delay baptism⁸, or unlawfully to refuse burial⁹. So far as marriage is concerned a minister who without just cause refuses to marry persons entitled to be married in his church or chapel commits an ecclesiastical offence¹⁰, and he may be guilty of such an offence if he fails to make due inquiry concerning the parties' residence¹¹ or the existence of impediments¹², or if he unlawfully publishes banns or solemnises marriage between persons neither of whom resides in the parish¹³, or conducts a marriage ceremony in a private house or elsewhere than in a church or chapel except under special licence¹⁴. In such case he may also incur liability under the general marriage law¹⁵.

Other ecclesiastical offences connected with the performance of a minister's ecclesiastical duties are breach of the obligation to read services¹⁶, failure to observe the requirement of residence¹⁷, and failure to attend a visitation¹⁸.

Ministers holding ecclesiastical office are subject to certain restrictions as to their right to engage in trade or any other occupation in such manner as to affect the performance of the duties of their office¹⁹.

1 These words of definition were adopted from the Incumbents (Discipline) Measure 1947, s 2 (repealed).

2 Ecclesiastical Jurisdiction Measure 1963, s 14 (1) (b) (ii): see also PARA 1352 ante. As to the persons against whom proceedings may be instituted for this and other offences under the Measure, see ss 17, 83 (3), and PARA 1351 ante.

3 Ibid s 14 (1) proviso. In contrast to the case of unbecoming conduct (see PARA 1356 ante) no mention is made of political activities.

4 *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 162, [1972] 1 All ER 1012 at 1015. It has been held in proceedings for a like offence that unless just cause for a like offence that unless just cause for neglect of duty is shown the law will infer its absence: *Bennett v Bonaker* (1830) 3 Hag Ecc 17 at 39.

5 In *Bland v Archdeacon of Cheltenham* [1972] 157 at 164, [1972] 1 All ER 1012 at 1016, the Court of Arches agreed with Chancellor Garth Moore's view that the offence should have been charged, not as serious neglect of duty but as an ecclesiastical offence of refusing to baptise. Cf. para 1353 ante.

6 The duties appertaining to the several offices held by persons in holy orders are described in earlier parts of this title: see eg paras 432 (archbishops), 472 (diocesan bishops), 494 (suffragan bishops), 499 (archdeacons), 525 (rural deans), 642 (deans and provosts), and 690, 698, 700 (incumbents), ante.

7 *Jenkins v Cook* (1876) 1 PD 80, PC; *Swayne v Benson* (1889) 6 TLR 7; *Banister v Thompson* [1908] P 362; *R v Dibdin* [1910] P 57, CA; affd. sub nom. *Thompson v Dibdin* [1912] AC 533, HL. A letter stating 'If you present yourself for Holy Communion I shall certainly refuse to communicate you' amounts to a refusal: *Banister v Thompson* supra at 379. As to lawful exclusion from Holy Communion, see the Revised Canons Ecclesiastical, Canon B16, and PARA 978 ante.

8 Subject to specified conditions it is an offence for a minister to refuse or unduly delay to baptise any infant within his cure who is brought to the church to be baptised (ibid Canon B22 para 4) or to go and baptise any such infant who is in weakness or danger of death (Canon B22 para 6). The act of refusal to baptise is not a doctrinal offence as such; it is concerned with pastoral work and activity, even though the motive behind the refusal might be partly connected with a doctrinal view held by the minister: *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 165, [1972] 1 All ER 1012 at 1017. An interview with the child's father at which the minister evinced a clear and final intention not to baptise the infant if and when brought to church for baptism constitutes a refusal: *Bland v Archdeacon of Cheltenham* supra at 166 and at 1017, 1018.

9 Subject to certain exceptions it is an offence for a minister to refuse to bury, according to the rites of the Church of England, the corpse or ashes of any person deceased within his cure or of any parishioner: Revised Canons Ecclesiastical, Canon B38 paras 1, 2 (amended by Amending Canon No. 3): see PARA 1041 ante. See also *Kemp v Wickes* (1809) 3 Phillim 264; *Escott v Mastin* (1842) 4 Moo PCC 104; *Titchmarsh v Chapman* (1844) 3 Notes of Cases 370; *Cooper v Dodd* (1850) 2 Rob Eccl 270.

10 *Argar v Holdsworth* (1758) 2 Lee 515: see PARA 1005 ante.

11 See PARA 1007 note 2 ante.

12 See the Revised Canons Ecclesiastical, Canon B33, and PARA 1003 ante.

13 *Nicholson v Squire* (1809) 16 Ves 259 at 261; *Wynn v Davies and Weever* (1835) 1 Curt 69; *Tuckness v Alexander* (1863) 32 LJ Ch 794 at 801. However, this is now subject to the exceptions provided by the Marriage Act 1949, ss 6 (4), 15 (1) (b), 35 (3), 72; City of London (Guild Churches) Act 1952, s 22 (2).

14 *Middleton v Crofts* (1736) 2 Atk 650.

15 See eg the Marriage Act 1949, s 75.

16 See PARA 987 ante.

17 *Mugg v Ley* (1709) Rothery's Precedents, No. 124, p. 60; *Pawlet v Head* (1728) 2 Lee 565; *Bluck v Rackham* (1846) 5 Moo PCC 305 at 312, 313. Penalties for such failure may also be the subject of civil proceedings: see PARA 1343 ante. As to the residence requirements, see the Revised Canons Ecclesiastical, Canon C25, and PARA 692 ante.

18 *Clewer v Pullen* (1684) Rothery's Precedents, No. 79, p. 36.

19 Revised Canons Ecclesiastical, Canons C26 para 2, C28: see PARAS 681-684 ante, 1360 post.

UPDATE

1357 Neglect of duty

TEXT AND NOTES 1, 2--Repealed and replaced: Clergy Discipline Measure 2003 Sch 2. See now 2003 Measure s 8(1); and PARA 1350A.

NOTE 15--Marriage Act 1949 s 75 modified: SI 2005/3129.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1358. Officiating without permission.

1358. Officiating without permission.

It is an ecclesiastical offence for a minister to officiate in a diocese against the inhibition or without the licence of the bishop¹ or to officiate in a parish without the incumbent's consent². He also commits such an offence if, not being a bishop, he assumes to exercise the episcopal function of ordination³.

It is an ecclesiastical offence for an overseas clergyman to officiate as priest or deacon in the province of Canterbury or York otherwise than in accordance with a permission granted by the archbishop of the province, and for any clergyman knowingly to allow such an offence to be committed in any church in his charge⁴; and it is such an offence for an overseas bishop to perform any episcopal functions in a diocese in the province of Canterbury or York unless he has the commission of the bishop of that diocese and the consent and licence of the archbishop of the province⁵.

A person who performs in the Church of England any function which, under a censure pronounced upon him by virtue of the Ecclesiastical Jurisdiction Measure 1963, he is disqualified from performing is guilty of an offence under the Measure⁶.

¹ *Colfatt v Newcomb* (1705) 2 Ld Raym 1205; *Smith v Lovegrove* (1755) 2 Lee 162; *Barnes v Shore* (1846) 8 QB 640; *Nesbitt v Wallace* [1901] P 354.

² *Richards v Fincher* (1873) LR 4 A & E 107; *Wood v Headingly-cum-Burley Burial Board* [1892] 1 QB 713 at 729; *Nesbitt v Wallace* [1901] P 354. See also Opinions of the Legal Board (5th Edn 1973) III/11, 12.

³ *Bishop of St Albans v Fillingham* [1906] P 163.

⁴ Overseas and Other Clergy (Ministry and Ordination) Measure 1967, ss 1 (6): see PARA 669 ante.

⁵ Ibid s 4 (3): see PARA 668 ante. It is expressly stated that proceedings in respect of these offences may be taken under the Ecclesiastical Jurisdiction Measure 1963: Overseas and Other Clergy (Ministry and Ordination) Measure 1967, ss 1 (6), 4 (3).

⁶ Ecclesiastical Jurisdiction Measure 1963, s 54. As to censures, see PARA 1372 et seq post.

UPDATE

1358 Officiating without permission

TEXT AND NOTE 6--1963 Measure s 54 repealed: Clergy Discipline Measure 2003 Sch 2. See now PARA 1350B.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1359. Simony.

1359. Simony.

The term 'simony' means primarily the buying and selling of holy orders or of an ecclesiastical benefice or admission to a benefice, but it may extend to other forms of trafficking for money in spiritual things¹. It is an ecclesiastical offence, and may also in some cases be the subject of proceedings in the temporal courts².

1 See PARAS 832, 833 ante. A minister who takes or demands illegal or extortionate fees for performing any office of the church is guilty of an ecclesiastical offence: *Burgoyne v Free* (1829) 2 Hag Ecc 456 at 464-466, 493; 2 Burn's Ecclesiastical Law (4th Edn) 232.

2 See PARA 832 ante. As to breaches of the promise in the declaration against simony by a person about to be instituted or collated to a benefice or licensed to a perpetual curacy, lectureship or preachership, see the Benefices Act 1898, s 1 (5); Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 4; and PARA 834 text and note 5 ante.

UPDATE

1359 Simony

NOTE 2--1898 Act s 1(5) repealed: Patronage (Benefices) Measure 1986 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1360. Unlawful trading.

1360. Unlawful trading.

If a minister holding ecclesiastical office contravenes the statutory provisions which restrict his liberty to engage in trade¹ he commits an offence for which proceedings may be taken in the consistory court of the diocese². For a first offence he is liable to be suspended for a period not exceeding one year; for a second offence committed after a sentence of suspension he is liable to be suspended for such time as the court thinks fit; and for a third offence he is to be deprived from his office and benefice³.

1 See the Pluralities Act 1838, s 29; Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 11; Revised Canons Ecclesiastical, Canon C28; and see PARAS 683, 484 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 6 (1) (d).

3 Pluralities Act 1838, s 31; Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 4.

UPDATE

1360 Unlawful trading

TEXT AND NOTES--Repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (ii) Offences Cognisable by the Courts/1361. Offences relating to church buildings.

1361. Offences relating to church buildings.

It is an ecclesiastical offence to make any alteration (whether by addition, subtraction or otherwise) to the fabric, fittings or ornaments of a church or to a churchyard without a faculty for the purpose¹.

An incumbent who, by bolting and barring the doors of the church, prevents the churchwardens from entering it to keep it cleaned and in order commits an ecclesiastical offence².

¹ See PARA 1306 et seq, 1341 ante. As to the unauthorised interference with a churchyard, see PARA 1108 ante. As to the protection of church buildings and their contents by the general criminal law, see the Theft Act 1968, s 9 (burglary); Criminal Damage Act 1971, s 1 (destroying or damaging property); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.

² *Bellars v Geast* (1741) Rothery's Precedents, No. 157, p. 77.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (iii) Procedure/1362. Laying of complaint.

(iii) Procedure

1362. Laying of complaint.

Proceedings charging an offence under the Ecclesiastical Jurisdiction Measure 1963¹ are instituted by way of complaint laid, in the case of an archbishop or a bishop, before the registrar of the relevant province or, in the case of a priest or deacon, before the registrar of the diocese in which he held or holds preferment or in which he resided or resides at the date of the alleged offence or of the complaint². The proceedings may only be instituted by certain specified complainants³. No proceedings may be instituted unless the act or omission constituting the offence, or the last of them if the offence consists of a series, occurred within the three years ending with the day on which the complaint is laid⁴, although if the offence is one of which the accused has been convicted in a secular court the complaint may be laid within six months of the conviction becoming conclusive even if the three year period has elapsed⁵. Within twenty-eight days after laying the complaint the complainant must serve personally on the accused a copy of the complaint and supporting affidavit⁶.

The procedure thereafter depends upon whether the alleged offence involves doctrine, ritual or ceremonial⁷ and, if it does not, upon whether the accused is an archbishop, a bishop, or a priest or deacon⁸. Proceedings for offences not involving doctrine etc.⁹ are tried by a consistory court if the accused is a priest or deacon¹⁰ or by a commission of convocation if the accused is an archbishop or a bishop¹¹. All proceedings for offences involving matters of doctrine etc. are tried by the Court of Ecclesiastical Causes Reserved¹².

A priest or deacon against whom proceedings are pending may be inhibited from performing the services of the church¹³.

1 As to ecclesiastical offences, see PARA 1352 et seq ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 18 (1). Three copies of the complaint must be lodged by delivering or posting them to the registrar's office: Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 3 (2), 59. The complaint must be in the prescribed form, signed by each complainant, stating his authority or qualification to act as complainant and the offence charged, with particulars of the alleged acts or omissions constituting it, and the complainant's address for service, and must be verified by affidavit (with a copy affidavit) and supported by certificates of the complainant's authority or qualifications unless the registrar dispenses with these certificates: Ecclesiastical Jurisdiction Measure 1963, s 18 (2); Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 3 (2)-(8). For forms, see Appendix, Forms 1-6, and Court Forms. Where a complaint is laid by several persons the service of a document at the address for service specified in the complaint is deemed to be service on all those persons: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 58 (5). In relation to a complaint 'registrar' means the registrar of a province or diocese before whom the complaint was made, and includes a person appointed to act as deputy registrar: r 2 (1). As to diocesan registrars, see PARA 1281 ante.

3 Thus (1) proceedings against an archbishop may be instituted (a) (save in respect of his duties as diocesan) by not less than two of his comprovincial diocesan bishops, or (b) (save in respect of his duties as metropolitan) by not less than ten persons of whom not less than five are incumbents in his diocese and not less than five are lay members of the diocesan synod;

(2) proceedings against a diocesan bishop may be instituted (a) by an authorised complainant (as defined below), or (b) by the persons described in (1) (b) supra;

(3) proceedings against a suffragan bishop may be instituted (a) by the bishop who commissioned him, (b) by an authorised complainant, (c) by the persons described in (1) (b) supra, or (d) (if he is the incumbent of a parochial benefice) by six or more persons of full age whose names are on the electoral roll of the parish;

(4) proceedings against any other bishop may be instituted (a) by the bishop of the diocese in which he holds preferment or resides, (b) by an authorised complainant, or (c) (if he is the incumbent of a parochial benefice), by the persons described in (3) (d) supra; and

(5) proceedings against a priest or deacon may be instituted (a) by an authorised complainant, (b) (if he is the incumbent of a parochial benefice or a curate in charge of a conventional district) by the persons described in (3) (d) supra, or (c) (if he is a stipendiary curate licensed to a benefice) by the incumbent or the persons described in (3) (d) supra: Ecclesiastical Jurisdiction Measure 1963, ss 19, 20; Synodical Government Measure 1969, s 4 (7).

'Authorised complainant' means a person authorised by a bishop to lay a complaint under the Ecclesiastical Jurisdiction Measure 1963, Part III (ss. 18-21), or, in the case of proceedings against a bishop, a person authorised by the provincial archbishop: s 66 (1). Persons may be nominated under ss 25, 33 (7) or 43 to promote a complaint, and have the exclusive right to do so: s 70 (see PARA 1363 post). However, such nomination is made only after the preliminary inquiry into the complaint. As to the position where a clergyman is the incumbent of or licensed to more than one benefice, see s 21 (1) (a), (2). A guild church (see PARA 597 et seq ante) is for the purpose of these provisions deemed to be a parochial benefice: s 21 (1) (b).

4 Ibid s 16.

5 Ibid s 16 proviso.

6 Ibid s 18 (3); Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 4 (1), (2). As to personal service and affidavits of service, see r 58 (1), and PARA 1366 post. With the complaint the complainant must serve two forms of statement of the accused's address for service, which the accused must complete and sign, serving one on the complainant and lodging the other with the registrar: r 4 (3).

7 Proceedings under the Ecclesiastical Jurisdiction Measure 1963 for an offence involving matter of doctrine, ritual or ceremonial may only be instituted if the offence was committed within the province of Canterbury or York, but this limitation does not apply to other offences: s 15.

8 Proceedings under the Ecclesiastical Jurisdiction Measure 1963 may be instituted against an archbishop, diocesan bishop, suffragan bishop or any other bishop or a priest or deacon who, when the offence was alleged to have been committed or when the complaint is laid, held or holds preferment in any diocese or resided or resides in any diocese: s 17. But see s 83 (3), which provides that (subject to the Ecclesiastical Commissioners Act 1840, s 29, relating to rectories annexed to canonries of Westminster) nothing in the Ecclesiastical Jurisdiction Measure 1963 is to authorise proceedings against the holder of an office in a royal peculiar.

9 See ibid s 14 (1), and PARA 1352 ante.

10 Ibid ss 6 (1) (a), 22. As to consistory courts, see PARA 1274 et seq ante.

11 Ibid ss 9, 32. As to commissions of convocation, see PARA 1291 ante.

12 Ibid ss 10 (1) (a), 38. As to the Court of Ecclesiastical Causes Reserved, see PARAS 1289, 1290 ante.

13 See ibid s 77, and PARA 1376 post.

UPDATE

1362 Laying of complaint

NOTE 3--1963 Measure s 70 amended, effectively removing the references to ss 25, 33(7): Clergy Discipline Measure 2003 Sch 2.

TEXT AND NOTE 5--Repealed: Clergy Discipline Measure 2003 Sch 2.

NOTE 7--Words 'but this limitation' to the end omitted: 1963 Measure s 15 amended by the Clergy Discipline Measure 2003 Sch 2.

NOTE 8--1963 Measure s 83(3) applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTES 9-11--Repealed: Clergy Discipline Measure 2003 Sch 2. As to jurisdiction over disciplinary proceedings for misconduct see PARA 1350A et seq.

TEXT AND NOTE 13--1963 Measure s 77 repealed: Clergy Discipline Measure 2003 Sch 2.
See PARA 1376.

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1363. Interview and inquiry.

As soon as possible after the laying of the complaint the bishop (where the accused is a priest or deacon) or the archbishop (where the accused is a bishop and the complaint involves matter of doctrine, ritual or ceremonial) affords the accused and the complainant the opportunity of a private interview, after which he may either (1) decide that no further step be taken in the matter of the complaint¹, in which case he gives notice of his decision to the parties and to the registrar, or (2) refers the complaint for an inquiry and notifies the registrar accordingly². In all other cases the complaint stands referred for an inquiry³.

On the application⁴ of a priest or deacon accused of an offence not involving doctrine etc. the bishop may, after consulting the complainant, pronounce censure on the accused, in which event no further steps may be taken in the matter⁵. Any such censure must be reduced to writing⁶.

Where a complaint is referred, or stands referred, under the foregoing provisions, an inquiry must be held to decide whether the accused has a case to answer⁷. In the case of a complaint against a priest or deacon not involving doctrine, ritual or ceremonial it is conducted by an examiner selected by ballot from a panel appointed by the diocesan synod⁸; in the case of such a complaint against a bishop or archbishop it is conducted by an episcopal committee assisted by a legal assessor⁹; and in the case of any complaint involving doctrine etc. it is conducted by a committee of convocation¹⁰. The parties may be assisted or represented by friends or advisers at any inquiry before an examiner or at any meeting of a committee, at which they are invited to be present¹¹.

Evidence is given by affidavit, but a deponent may, or on the application of either party must, be requested to give oral evidence on oath¹². The complainant must lodge with the registrar the original and copies of his affidavits and copies of a notice of the names of those he intends to call to give oral evidence, and copies must be served personally on the accused¹³, who must then lodge similar documents and serve copies on the complainant¹⁴. No further documents may be laid before the inquiry except with the registrar's leave¹⁵. The registrar must give the parties fourteen days' written notice of the time and place fixed for the inquiry¹⁶.

The examiner or committee has to decide whether there is a case to answer¹⁷. If there is no case to answer the examiner or committee declares the decision and no further steps may be taken¹⁸. If there is a case to answer the examiner or committee must specify the offence¹⁹ and a person must be nominated to promote the complaint²⁰. The committee of convocation inquiring into a complaint involving doctrine etc. may dismiss the complaint²¹ if it is of opinion that the offence charged is too trivial to warrant further proceedings, or that it was committed under extenuating circumstances or that further proceedings would not be in the interests of the Church of England, in which case the committee must report to the relevant convocation²² and no further steps may then be taken²³.

1 Ecclesiastical Jurisdiction Measure 1963, ss 23 (1) (a), 39 (1) (a), 40. As to the position under s 23 (1) (a) where there is a vacancy in the see, see PARA 1276 note 4 ante. Every effort should be made to deal with pastoral problems without recourse to litigation: *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 172; and see PARA 1350 note 1 ante.

2 Ecclesiastical Jurisdiction Measure 1963, ss 23, 39, 40; Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 5, 6 (1), 29.

3 Ecclesiastical Jurisdiction Measure 1963, ss 33 (2), 41.

4 The application must state the extent to which the accused admits the offence: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 11 (2). Two copies are lodged with the registrar and one is served on the complainant: r 11 (1).

5 Ecclesiastical Jurisdiction Measure 1963, s 31. As to censures, see PARA 1372 et seq post. Notice is given of the time and place for the pronouncement; the parties are not obliged to attend, but the registrar must do so: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 11 (3). If the bishop decides not to pronounce censure under this provision written notice of his decision must be given to the parties and filed in the registry: see r 11 (5).

6 Ibid r 11 (4). Copies must be given to the parties: r 11 (4).

7 Ecclesiastical Jurisdiction Measure 1963, ss 24 (1), 33 (2), 42 (2).

8 Ibid ss 23 (1) (b), 30, Sch. 2 paras 1, 2; Synodical Government Measure 1969, s 4 (7). The parties are given not less than seven days' notice of the ballot, at which they are entitled to be present by themselves or their representatives: Ecclesiastical Jurisdiction Measure 1963, Sch. 2 para 2; Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 6 (1), (2). The registrar gives them notice of the examiner's name: r 6 (3). As to examiners, see further PARA 1282 ante.

9 Ecclesiastical Jurisdiction Measure 1963, s 33 (2), (4). The committee, which gives a majority decision, consists (in the case of a bishop) of the archbishop of the relevant province and two dis-interested diocesan bishops of that province appointed by the archbishop and (in the case of an archbishop) of the three senior disinterested diocesan bishops of his province: s 33 (3). The senior bishops are, in the province of Canterbury, the bishops of London and Winchester, in that order, and, in the province of York, the bishop of Durham; subject to this, seniority is determined by the length of uninterrupted tenure of office: s 67. The registrar gives the parties notice of the composition of the committee: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 19 (1).

10 Ecclesiastical Jurisdiction Measure 1963, s 42 (2). As to the composition of the committee, which gives a majority decision, see s 42 (3). The registrar gives the parties notice of its composition: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 30 (1).

11 Ecclesiastical Jurisdiction Measure 1963, ss 24 (2), 33 (5), 42 (4). If the accused does not appear and is not represented the examiner or committee, if satisfied that he was duly served, may proceed in his absence: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 57.

12 Ecclesiastical Jurisdiction Measure 1963, ss 24 (3), 33 (6), 42 (5). The affidavit of any deponent who fails to attend on such request must be disregarded: ss 24 (3), 33 (6), 42 (5). The evidence of any person incapable of giving evidence on oath must be given orally: ss 24 (3) proviso, 33 (6) proviso, 42 (5) proviso. As to the application, see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 9 (1), 21 (1), 32 (1). The deponent's attendance may be requested by the examiner or committee of his or its own motion: rr 9 (2), 21 (2), 32 (2).

13 Ibid rr 7 (1), (2), 19 (2), (3), 30 (2), (3). As to personal service and affidavits of service, see r 58 (1), and PARA 1366 post.

14 Ibid rr 7 (3), 19 (4), 30 (4).

15 Ibid rr 7 (4), 19 (5), 30 (5).

16 Ibid rr 20 (1), 31 (1). Unless postponed, the inquiry must be held not later than twenty-eight days after the selection of the examiner or committee, on a date fixed by him or it: rr 8 (1), (2), 20 (1), (2), 31 (1), (2). As to postponement, see rr 8 (3), (4), 20 (3), (4), 31 (3), (4).

17 Ecclesiastical Jurisdiction Measure 1963, ss 24 (1), 33 (3), 42 (2). The decision must be in writing, and a copy must be given to the accused, the complainant and (for filing) the registrar: ss 24 (6), 33 (9), 42 (9); Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 10, 22, 33. In the case of an offence not involving doctrine etc. notice must also be given (in the case of a priest or deacon) to the bishop or (in the case of a bishop) to the Upper House of the relevant convocation or (in the case of an archbishop) to the other archbishop: Ecclesiastical Jurisdiction Measure 1963, ss 24 (6), 33 (9). In the case of an offence involving doctrine etc. notice must also be given to the Upper House of the relevant convocation and (in the case of an archbishop) to the other archbishop: s 42 (9).

18 Ibid ss 24 (5), 33 (8), 42 (8), (10).

19 Ibid ss 24 (4), 33 (6), 42 (6).

20 Ibid ss 25, 33 (7), 43. The nomination is made (in the case of a complaint against a priest or deacon not involving doctrine etc.) by the bishop or (in the case of such a complaint against a bishop or archbishop) by the

episcopal committee or (in the case of any complaint involving doctrine etc.) by the Upper House of the relevant convocation: ss 25, 33 (7), 43. In the case of an archbishop the Upper House meets under the presidency of the senior diocesan bishop: s 43 proviso. No other person may promote a complaint: s 70. As to the seniority of bishops, see s 67, and note 9 supra. Where, under s 33 (7), the committee declares that there is sufficient evidence to put an archbishop on trial, the two Upper Houses appoint a commission comprising the Dean of the Arches and Auditor and four disinterested diocesan bishops to try the accused (s. 35 (a)), and where the committee so declares in respect of a bishop the relevant Upper House appoints a commission comprising the Dean and four disinterested members of that House to try the accused (s. 35 (b)). The Dean presides over the commission at the trial: s 36 (a).

21 It must first consider the evidence and any statement made by the accused and (if the accused is a priest or deacon) any representations by his bishop: *ibid.* s 42 (7).

22 *Ibid* s 42 (7).

23 *Ibid* s 42 (10).

UPDATE

1363 Interview and inquiry

TEXT AND NOTES--The provisions described in this para no longer apply to cases involving misconduct, but are confined to doctrine, ritual or ceremonial. 1963 Measure Pts IV (ss 22-31), V (ss 32-37), Sch 2 repealed, s 70 amended: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct from that date see PARA 1350A et seq.

NOTE 9--Section 33(4) amended: Courts and Legal Services Act 1990 s 71(2), Sch 10 para 19.

The order of seniority of all diocesan bishops (other than archbishops) for the purposes of the 1963 Measure is determined simply by reference to the length of time that each of them has held office as diocesan in either province without interruption from any cause: s 67 (amended by the Clergy Discipline Measure 2003 Sch 1 para 11).

NOTE 10--Section 42(3) amended: 1990 Act s 71(2), Sch 10 para 18(2).

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1364. Articles and answer.

Within twenty-eight days after his nomination¹ the promoter must lodge with the registrar articles² charging the offence or offences³ specified by the examiner or committee, together with his certificate of nomination⁴, and must serve a copy of the articles personally on the accused⁵. The promoter may apply to the examiner or committee, or to the trial court, for leave to include particulars of any offence disclosed by the evidence at the inquiry either in addition to or in substitution for the particulars of the offences found by the examiner or committee⁶.

Within fourteen days after the service of the articles on him the accused may lodge with the registrar an answer⁷ and serve a copy on the complainant⁸. An answer must admit or deny each offence, and may admit or deny, or give the accused's account or explanation of, the matters alleged in the articles to constitute each offence⁹.

1 As to the nomination of the promoter, see PARA 1363 ante. If he applies to include particulars of other offences this period is extended: see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 12 (5), 23 (5), 34 (5).

2 For the prescribed form, see *ibid* Appendix, Forms 11, 22, 31, and Court Forms. Six copies or, in the case of an offence involving matter of doctrine, ritual or ceremonial, eleven copies are required: rr 12 (1), 23 (1), 34 (1).

3 Each offence must be charged separately: *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 168, [1972] 1 All ER 1012 at 1019. The articles must allege all facts required to constitute the offence. There is no way in which the parties can make written admissions save in the pleadings: *Banister v Thompson* [1908] P 362 at 370.

4 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, Appendix, Forms 12, 23, 32.

5 Ecclesiastical Jurisdiction Measure 1963, ss 28 (b), 36 (c), 45 (1) (b); Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 12 (1), (6), 23 (1), (6), 34 (1), (6). As to personal service and affidavits of service, see r 58 (1), and PARA 1366 post.

6 Ecclesiastical Jurisdiction Measure 1964, ss 26, 34, 44. As to the application, see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 12 (2)-(6), 23 (2)-(6), 34 (2)-(6), Appendix, Form 13, and Court Forms.

7 For a form, see Court Forms. Six copies or, in the case of an offence involving doctrine, etc., eleven copies are required: Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 13 (1), 24 (1), 35 (1).

8 *Ibid* rr 13 (1), 24 (1), 35 (1). Note that the copy is served on the complainant, not on the promoter.

9 *Ibid* rr 13 (2), 24 (2), 35 (2).

UPDATE

1364 Articles and answer

TEXT AND NOTES--The provisions described in this para no longer apply to cases involving misconduct, but are confined to doctrine, ritual or ceremonial. 1963 Measure Pts IV (ss 22-31) and V (ss 32-37) repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct from that date see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (iii) Procedure/1365. Interlocutory applications.

1365. Interlocutory applications.

Applications to a registrar (unless otherwise provided¹), or to the Dean of the Arches and Auditor or a Commission of Review for leave to withdraw an appeal or amend a notice of appeal or petition for review², must be made in writing and lodged with the registrar, a copy being served on the other side³. If there is also lodged a written consent by the other party or if the registrar is satisfied that the other party does not oppose the application he may grant an application to him without a hearing, but in other cases he must fix a hearing and give both parties notice of it⁴.

Any court or commission established under the Ecclesiastical Jurisdiction Measure 1963 has the same powers as the High Court in relation to the attendance and examination of witnesses and the production and inspection of documents⁵. Either party may apply to the registrar, or to the court at the trial, for an order for the production of documents for inspection or at the trial or for the attendance of a witness at the trial, or the court may make such an order of its own motion⁶. If the trial or appeal court or a Commission of Review has ordered a person's evidence to be given before an examiner either party may apply to the registrar for an order requiring that person to attend before the examiner⁷.

A person required to do some act in disciplinary proceedings within a specified period may apply to the registrar for its enlargement, even if it has expired, or for its abridgment⁸.

Any application may be granted on such terms as the person or body granting it may think just⁹.

1 See eg the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 58 (1) proviso (b) (substituted service: see PARA 1366 post), and r 53 (taxation of costs: see PARA 1300 ante).

2 See *ibid* rr 40, 45, and PARAS 1370, 1371 post.

3 *Ibid* r 60 (1), (2). For the form, see Appendix, Form 57, and Court Forms.

4 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 60 (3), (4). At the hearing either party may appear in person or be represented by a friend or adviser or (once the inquiry is concluded) by counsel or solicitor: r 61.

5 Ecclesiastical Jurisdiction Measure 1963, s 81 (1).

6 See the Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 62 (1), (2), (4). As to the service of orders, see r 62 (5), (6).

7 *Ibid* r 62 (3). As to the service of orders, see r 62 (5), (6).

8 *Ibid* r 63.

9 *Ibid* r 60 (5).

UPDATE

1365 Interlocutory applications

NOTE 5--The Vicar-General's court of each of the provinces of Canterbury and York also has the same powers: 1963 Measure s 81(1); Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 8.

The 1963 Measure s 81 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

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1366. Service, time, non-compliance with rules, and forms.

Personal service of a document on a person is effected by leaving a copy of it with him personally, and within three days an affidavit of service must be lodged with the registrar¹. If, however, that person or his solicitor acknowledges the service in writing and a copy of the acknowledgment is lodged with the registrar the document is deemed to have been served personally². The registrar may give leave for substituted service if he is satisfied on written application supported by an affidavit that it is impracticable to serve the document personally, and substituted service will then be deemed to be personal service³. Service of any document not required to be served personally may be effected by leaving it at the proper address⁴ of the person to be served, by sending it there by the recorded delivery service, or in such other manner as the registrar may direct⁵. An affidavit of service must state by whom, when and how the document was served⁶.

Where any act is required by the rules to be done within a specified period after a specified date or event, the period begins immediately after that date or the day on which the event occurred⁷. Where a specified number of days' notice is to be given of any proceeding, or where the time fixed for a proceeding is to be not less than a specified number of days after a specified event, at least that number of days must intervene between the day on which notice is served or, as the case may be, on which the event occurred and the day fixed for the proceeding⁸. However, in calculating any period or number of days not exceeding seven days any Saturday, Sunday or bank holiday⁹, and Christmas Day and Good Friday, must be disregarded¹⁰.

Non-compliance with the rules does not render proceedings void unless the court or commission before whom they are pending¹¹ when the irregularity is discovered so directs, but the proceedings may be set aside, wholly or partly, as irregular or amended or otherwise dealt with in such manner and on such terms as the court thinks fit¹².

Subject to any rule expressly requiring a prescribed form¹³ to be used, the prescribed forms are to be used where applicable and, where they are not applicable, forms of the like character with such variations as circumstances may require are to be used¹⁴.

1 Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 58 (1). For the form of affidavit, see Appendix, Form 53, and Court Forms.

2 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 58 (1) proviso (a). For the form, see Appendix, Form 54, and Court Forms.

3 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 58 (1) proviso (b). For the form of affidavit, see Appendix, Form 55, and Court Forms.

4 A person's proper address is his address for service or, if he has no address for service, the business address of any solicitor acting for him in the proceedings or his usual or last known address: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 58 (4).

5 Ibid r 58 (2).

6 Ibid r 58 (3).

7 Ibid r 64 (1).

8 Ibid r 64 (2), (3).

9 For the meaning of 'bank holiday', see *ibid* r 64 (4); Banking and Financial Dealings Act 1971, ss 1 (1), 4 (1), Sch. 1.

10 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 64 (4).

11 For the purposes of *ibid* r 65, all proceedings up to the trial are deemed to be pending in the trial court or commission: r 65.

12 *Ibid* r 65.

13 For the prescribed forms, see *ibid* Appendix.

14 *Ibid* r 66.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/ (iii) Procedure/1367. Trial.

1367. Trial.

The trial takes place within twenty-eight days after the lodging of the articles, at a time and place fixed by the judge of the trial court¹. The registrar must give the promoter and the accused not less than fourteen clear days' notice of the hearing². Subject to what follows, the procedure at the trial, so far as circumstances admit, is the same as at the trial of a person by a Crown Court exercising criminal jurisdiction³.

In the case of a complaint against a priest or deacon not involving matter of doctrine, ritual or ceremonial the chancellor of the consistory court has the functions at the trial of a judge of the Crown Court exercising criminal jurisdiction⁴. He sits with four assessors chosen by ballot from panels of priests and laymen in equal proportions⁵. The functions of the assessors, who must be unanimous, are the same as those of a jury in the Crown Court⁶. In the case of a complaint involving doctrine etc. The court sits with not less than three nor more than five advisers selected by the Dean of the Arches and Auditor from a panel of eminent theologians and liturgiologists⁷. The determination of any matter before a commission of convocation or the Court of Ecclesiastical Causes Reserved is according to the opinion of the majority of its members⁸.

If satisfied that it is in the interests of justice the court may direct any person or class of persons to be excluded during any part of the proceedings⁹. It may, on such terms as it thinks just, allow the promoter to withdraw charges or amend the articles (but not so as to charge a new offence), or the accused to put in or amend his answer¹⁰. If the accused admits an offence or any act or omission alleged the court may treat it as proved and dispense with evidence of it¹¹. The rules as to the admissibility of evidence and as to the competency or compellability of witnesses are the same as those at a criminal trial in the Crown Court¹². Evidence is given orally on oath in open court¹³, but the court or registrar may allow the evidence of a witness who is unable to attend because of illness to be given by deposition taken before an examiner¹⁴.

In the case of a complaint not involving doctrine etc. against a bishop or archbishop the court must reduce its finding to writing, publish it to the accused and such other persons as it thinks ought to have notice of it and send a copy to the relevant or the other archbishop¹⁵. In the case of an accused archbishop the finding is laid before a joint meeting of the Upper Houses of both convocations which must, if the finding is one of guilt, determine the censure to be pronounced by the other archbishop¹⁶. In the case of any other bishop the finding is laid before the Upper House of the relevant convocation which must determine the censure to be pronounced by the relevant archbishop¹⁷. However, no censure may be pronounced until the time for lodging a petition for a Commission of Review¹⁸ has expired or, if a petition has been lodged, the proceedings upon it have been concluded¹⁹. In all other cases if the accused is found guilty²⁰ the court must decide the censure, which must be reduced to writing and pronounced in open court, although it is not invalid merely because it is not pronounced in the accused's presence²¹.

1 Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 14 (1), 25 (1), 36 (1). It may be postponed at the request of the accused or promoter or of the judge's own motion: rr 14 (2), (3), 25 (2), (3), 36 (3), (4). The judge is either the judge of the consistory court, the Dean of the Arches and Auditor or the presiding judge of the Court of Ecclesiastical Causes Reserved, depending on the court of trial, as to which see PARAS 1284, 1287, 1290 ante. See also PARA 1363 note 20 ante.

2 Ecclesiastical Jurisdiction Measure 1963, ss 28 (d), 36 (e), 45 (1) (d). The court may proceed in the accused's absence if satisfied that he was given adequate notice: ss 28 (d), 36 (e), 45 (1) (d).

3 Ibid ss 28 (a), 36 (b), 45 (1) (a).

4 Ibid s 28 (e).

5 Ibid s 30, Sch. 2 paras 5, 6; Synodical Government Measure 1969, s 4 (7): see PARA 1283 ante. The registrar gives the parties not less than seven days' notice of the time appointed for the ballot, which he conducts and at which the parties or their representatives may, if they desire, be present: Ecclesiastical Jurisdiction Measure 1963, Sch. 2 para 6; Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 15 (1), (2). The registrar gives the parties notice and informs the judge of the names of the assessors selected (r. 15 (3)), and within seven days of receiving the notice either party may in writing object to an assessor, stating the reasons, whereupon, if the judge approves the reasons, the registrar must try to arrange another ballot (r. 15 (4)) and the assessor objected to is discharged from sitting (Ecclesiastical Jurisdiction Measure 1963, Sch. 2 para 7). If by reason of objection, non-attendance or otherwise the necessary number of assessors is not available the judge must, if there is not time for another ballot, appoint some priest or layman willing to serve to whom no party objects for sufficient reason: Sch. 2 para 8.

6 Ibid s 28 (e). For the procedure if they fail to agree, see s 29; Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 18 (1), (2). The argument that the assessors are not a common jury but a select panel of experienced and intelligent persons is untenable as they have to accept the chancellor's directions on law and are not entitled to form their own conclusions about it: *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 163, [1972] 1 All ER 1012 at 1016. The chancellor has a discretion whether to allow an assessor to question the accused; the assessor should normally reduce the question to writing and the chancellor may then put it himself: *Bland v Archdeacon of Cheltenham* supra at 169 and at 1021.

7 Ecclesiastical Jurisdiction Measure 1963, s 45 (2). The registrar notifies the accused and the promoter of the advisers' names: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 36 (2).

8 Ecclesiastical Jurisdiction Measure 1963, ss 36 (g), 45 (1) (f).

9 Ibid ss 28 (f), 36 (f), 45 (1) (e). In the case of a complaint against a priest or deacon not involving doctrine etc. This includes the assessors: s 28 (f).

10 Ecclesiastical Jurisdiction (Discipline) Rules 1964, rr 16 (1), (3), 26 (1), (3), 37 (1), (3). Either party proposing to apply to the court to exercise any such power must if practicable give written notice to the other party and to the registrar, but the court may exercise the power without notice: rr 16 (2), 26 (2), 37 (2).

11 Ibid rr 16 (4), 26 (4), 37 (4). If no answer has been lodged or put in, or if the answer fails to state or make clear what is admitted or denied the accused is treated as having denied the offence or allegation: rr 16 (5), (6), 26 (5), (6), 37 (5), (6).

12 Ecclesiastical Jurisdiction Measure 1963, ss 28 (c), 36 (d), 45 (1) (c). Any court or commission established under the Measure has the same powers as the High Court in relation to the attendance and examination of witnesses and the production and inspection of documents: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 58 (2).

13 Ibid rr 17 (2), 27 (2), 38 (2).

14 See ibid rr 17 (3)-(7), 27 (3)-(7), 38 (3)-(7), Appendix, Forms 18, 19, 27, 28, 36, 37, and Court Forms.

15 Ecclesiastical Jurisdiction Measure 1963, s 36 (h).

16 Ibid s 37 (1). As to the censure, see s 49, and PARA 1372 post.

17 Ibid s 37 (2). As to the censure, see s 49, and PARA 1372 post.

18 See ibid s 11 (1).

19 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 28.

20 If a priest or deacon accused of an offence not involving doctrine etc. is acquitted under the Ecclesiastical Jurisdiction Measure 1963, s 29 (ie when the assessors have failed to agree upon a verdict), the finding must be reduced to writing, and copies must be filed in the registry and given to each party: Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 18 (3).

21 Ecclesiastical Jurisdiction Measure 1963, ss 28 (g), (h), 45 (1), (g), (h).

UPDATE

1367 Trial

TEXT AND NOTES--The provisions described in this para no longer apply to cases involving misconduct, but are confined to doctrine, ritual or ceremonial. 1963 Measure s 11(1), Pts IV (ss 22-31), V (ss 32-37), Sch 2 repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct from that date see PARA 1350A et seq.

NOTE 5--See *Burridge v Tyler* [1992] 1 All ER 437 (assessor forming a tentative doubt about accused's case after discussions with him and before trial).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(iv) Appeals and Reviews/1368. Appeal from registrar.

(iv) Appeals and Reviews

1368. Appeal from registrar.

Either party may appeal from the decision of a registrar either, on an application made before the conclusion of the inquiry into a complaint, to the examiner or committee, as the case may be, or in any other case to the judge¹, by lodging with the registrar a notice of appeal within seven days after the decision, whereupon the registrar must fix a time and place for hearing the appeal and give both parties not less than three days' written notice of it².

¹ 'Judge' means, in relation to proceedings (1) before the consistory court, the judge of that court; (2) before a commission of convocation or on an appeal to a provincial court, the Dean of the Arches and Auditor; (3) before the Court of Ecclesiastical Causes Reserved, such one of the two judges, other than the bishops, as they may agree; and (4) on a petition to a Commission of Review, the presiding judge: Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 60 (7).

² Ibid r 60 (6). For the form of notice, see Appendix, Form 58, and Court Forms.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(iv) Appeals and Reviews/1369. Suspension of censure pending appeal.

1369. Suspension of censure pending appeal.

If an appeal is lodged under the Ecclesiastical Jurisdiction Measure 1963 against a judgment, order or decree of any court or commission constituted under that Measure in proceedings charging an offence or claiming a penalty or forfeiture against a clergyman, the censure or award of that court or commission is suspended until the appeal is determined¹.

¹ Ecclesiastical Jurisdiction Measure 1963, s 73. However, an appeal does not affect an inhibition pendente lite under s 77 (see PARA 1376 post): s 73.

UPDATE

1369 Suspension of censure pending appeal

TEXT AND NOTE 1--1963 Measure s 73 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(iv) Appeals and Reviews/1370. Appeal from consistory court.

1370. Appeal from consistory court.

Appeal lies from the judgment of a consistory court in proceedings against a priest or deacon for an offence not involving doctrine, ritual or ceremonial to the Arches Court of Canterbury or the Chancery Court of York, depending on the province in which the consistory court is constituted¹, at the instance of any party on a question of law and at the instance of the accused on a question of fact².

Within twenty-eight days after the decision of the consistory court the appellant must lodge with the registrar of the appellate court a notice of appeal stating the grounds of appeal and, if he appeals from only part of the judgment, specifying that part³. The appellate court fixes a time for the hearing and gives not less than fourteen days' notice to both parties⁴.

If the accused appeals on a question of fact the judge's notes and all documents and exhibits used in the consistory court must be available for use at the hearing, and the court may allow or require any shorthand note of the consistory court proceedings to be used⁵. The appellate court may require or allow witnesses who gave evidence for the purposes of the trial to give evidence for the purposes of the appeal either at the hearing or before an examiner, documents or exhibits produced at the trial to be produced at the appeal, and, in exceptional circumstances, new witnesses to give evidence at the hearing or before an examiner or other new evidence to be produced⁶. On an appeal on a question of law the same provisions apply to such extent as the appellate court thinks necessary for the purpose of examining any matters of fact relevant to the determination of that question⁷.

On the appeal the appellate court, by majority opinion of all the judges of the court, determines the questions raised by the appeal, and may thereupon confirm, reverse or vary any finding of the consistory court appealed from, or may remit the case with its determination to the consistory court to take such further proceedings in it as it directs⁸, in which case the judge of the consistory court fixes a time and place for the further proceedings, which continue as at the original trial⁹.

1 Ecclesiastical Jurisdiction Measure 1963, s 7 (1) (a). The appeal is heard by all the judges of the court: s 47 (1). As to these judges, see PARA 1285 ante.

2 Ibid s 7 (2) (b).

3 Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 39 (1)-(3). Six copies must be lodged, and the appellant must also lodge a copy with the diocesan registrar and serve a copy on the other side: r 39 (2). Except with the court's leave the appellant cannot rely on any ground not specified in the notice: r 39 (4). For the form of notice, see Appendix, Forms 38, 39, and Court Forms. As to withdrawal and amendment, see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 40. The registrar of the appellate court files one copy of the notice (r. 39 (5)), and the diocesan registrar transmits the paper to the registrar of the appellate court and requests the judge of the consistory court to send the registrar of the appellate court his note of the trial (r. 39 (6)). The parties are entitled to inspect and copy these papers: r 39 (6).

4 Ibid r 41 (1), (4). As to postponement, see r 41 (2), (3).

5 Ibid r 42 (1) (a), (b), (2).

6 Ibid r 42 (1) (c), (2). These powers would, as a general rule, be used sparingly: *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 163, 164, [1972] 1 All ER 1012 at 1016.

7 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 42 (3).

8 Ecclesiastical Jurisdiction Measure 1963, s 47 (1); Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 43 (1), (3). The appellate court may vary the censure or impose a censure for any offence in respect of which it confirms, varies or makes a finding of guilt, but without prejudice to its power to remit the decision as to the censure to the consistory court: r 43 (2). The registrar of the appellate court notifies the diocesan registrar of any determination or directions given: r 43 (4).

9 Ibid r 43 (4), applying with modifications rr 14 (2), (3), 15-17.

UPDATE

1370 Appeal from consistory court

TEXT AND NOTE 1--1963 Measure s 7(1) amended, s 7(2)(a), (b) substituted by the Clergy Discipline Measure 2003 Sch 1 para 4(c), distinguishing between disciplinary and non-disciplinary proceedings.

NOTE 1--1963 Measure s 47(1) substituted: Care of Churches and Ecclesiastical Jurisdiction Measure 1991 Sch 4 para 8 (see PARA 1285). For principles to be applied by the court in considering application for leave to appeal, see *Re St Mary the Virgin, Sherborne* [1996] 3 All ER 769.

The 1963 Measure s 47 applies only to proceedings under that Measure: s 47(1) amended by the Clergy Discipline Measure 2003 Sch 1 para 6(a).

NOTE 2--Appeal also lies from judgments, orders or decrees of the Vicar-General's court (see PARA 633A.2): 1963 Measure s 7(2); Care of Cathedrals (Supplementary Provisions) Measure 1994 Schedule para 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(iv) Appeals and Reviews/1371. Review of other disciplinary proceedings.

1371. Review of other disciplinary proceedings.

In the case of any complaint other than one against a priest or deacon not involving matter of doctrine, ritual or ceremonial¹ the accused may petition the Queen for the review of the finding² on a question of fact or either party may petition the Queen for the review of the finding² on a question of law³. The petition must state the grounds and, where the judgement comprised findings in respect of two or more offences and the petition relates only to one or some of them, must specify the findings concerned⁴.

The Clerk of the Crown in Chancery appoints a registrar of the commission and hands over to him the copies of the petition⁵. Where a question of doctrine is involved the commission requests five persons selected from the panel appointed jointly by the Upper Houses of the convocations⁶ to sit with it as advisers and give it such assistance on the matters of doctrine involved as it may require⁷. The registrar notifies the parties of the names of the members of the commission and of any advisers so selected⁸. The commission fixes a time for the hearing and gives the parties not less than fourteen days' notice of the sittings⁹.

At the hearing of a review on a question of fact or, if the commission thinks it necessary, on a question of law, the judge's notes and the documents and exhibits used in the court below must be available, and the commission may allow or require any shorthand note of the evidence below to be used¹⁰. It may also allow or require evidence to be given before it or before an examiner by witnesses whose evidence was used below, the production of additional documents and exhibits produced at the trial and, in exceptional circumstances, new witnesses to give evidence before it or before an examiner or other new evidence to be produced¹¹.

On the review the commission, whose judgment is that of the majority although each member must state his own opinion¹², must determine the questions raised and may thereupon confirm, reverse or vary the finding or remit the case with its determination for such further proceedings as it may direct¹³, although if the review is of a finding of a commission of convocation the Commission of Review may not make a finding of guilt but must remit the case to the commission of convocation with its determination and directions¹⁴. Where, on a review of a finding of the Court of Ecclesiastical Causes Reserved, the Commission of Review confirms, varies or makes a finding of guilt it may vary the censure or impose a censure, but without prejudice to its power to remit the decision as to the censure to the court below¹⁵.

The registrar of the commission must notify the registrar of the court below of the commission's determination or directions and, if the case is remitted, the Dean of the Arches and Auditor or presiding judge of the Court of Ecclesiastical Causes Reserved, as the case may be, must fix a time and place for the remitted proceedings, which continue as at the original trial¹⁶.

1 As to appeals from such complaints, see PARA 1370 ante.

2 I.e. the finding of the commission of convocation or Court of Ecclesiastical Causes Reserved: see PARA 1367 ante.

3 Ecclesiastical Jurisdiction Measure 1963, s 11 (1), (2) (a). As to Commissions of Review, see PARA 1292 ante.

4 Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 44 (3). Six copies of the petition must be lodged, within twenty-eight days after the finding, with the Clerk of the Crown in Chancery, a copy

must be lodged with the registrar of the court appealed from and a copy must be served on the other party: Ecclesiastical Jurisdiction Measure 1963, s 11 (1)-(3); Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 44 (1), (2). For the form of petition, see Appendix, Forms 42-45, and Court Forms. Except with the commission's leave the petitioner cannot rely on any ground not stated in the petition: Ecclesiastical Jurisdiction (Discipline) Rules, 1964, r 44 (4). As to withdrawal or amendment, see r 45.

5 Ibid r 44 (5). The registrar of the court appealed from transmits to the registrar of the commission the record of the proceedings and other papers, and requests the trial judge to send his note of the trial to the registrar of the commission: r 44 (6). The parties are entitled to inspect and copy these documents: r 44 (6).

6 As to this panel, see the Ecclesiastical Jurisdiction Measure 1963, s 48 (2), and PARA 1292 ante.

7 Ibid s 48 (3).

8 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 44 (7).

9 Ibid r 46 (1), (4). As to postponement, see r 46 (2), (3).

10 Ibid r 47 (1) (a), (b), (2), (3).

11 Ibid r 47 (1) (c), (2), (3).

12 Ecclesiastical Jurisdiction Measure 1963, s 48 (4).

13 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 48 (1). As to the binding effect of precedent, see the Ecclesiastical Jurisdiction Measure 1963, s 48 (5), (6), and PARAS 1271, 1292 ante.

14 Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 48 (1) proviso.

15 Ibid r 48 (2). As to censures, see PARA 1372 et seq post.

16 Ibid r 48 (3), applying with modifications rr 25 (2), (3), 26, 27, 36 (2)-(4), 37, 38.

UPDATE

1371 Review of other disciplinary proceedings

TEXT AND NOTES 1-3--1963 Measure s 11(1) (relating to petitions against findings of convocations or commissions) repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1372. Censures generally.

(v) Censures and other Penalties

1372. Censures generally.

The censures which may be pronounced¹ against an accused person found guilty of an offence under the Ecclesiastical Jurisdiction Measure 1963² are deprivation³, inhibition⁴, suspension⁵, monition⁶ and rebuke⁷. In general only one censure may be imposed in respect of one offence⁸. If the court is satisfied that the offence will not be repeated it is entitled to accept the accused's assurance of future submission and is not bound to pronounce a censure⁹. Normally, however, it is to be expected that a finding of guilt will be followed by the pronouncement of a censure, although the court has, generally speaking, and in the absence of express enactment on the subject, a discretion as to its leniency or severity¹⁰. In determining the appropriate censure the court acts in a judicial, not a pastoral, capacity, and the paramount consideration is the gravity of the offence and not the well-being of the parish as a whole, although if an offence merits a particular censure the judge, in deciding whether to pronounce it, may take into consideration all relevant considerations including the interests of the parish¹¹.

A censure of deprivation may be followed by the extra-judicial act of deposition from holy orders¹². Excommunication, although perhaps a remote possibility today, may also, it seems, be imposed extra-judicially¹³. Sequestration¹⁴ and the penalties and forfeitures which may be incurred under the Pluralities Act 1838¹⁵ are, in general, the subject of civil proceedings.

It is an offence under the Ecclesiastical Jurisdiction Measure 1963 for any person to perform in the Church of England any function which, by virtue of a censure under that Measure, he is disqualified from performing¹⁶.

1 As to the determination and pronouncement of censures, see the Ecclesiastical Jurisdiction Measure 1963, ss 28 (g), (h), 37, 45 (1) (g), (h), and PARA 1367 ante.

2 See *ibid* s 49 (1). Any censure pronounced pursuant to the Measure of 1963 must be recorded in the diocesan registry concerned or, as the case may be, in the relevant provincial registry: s 78. As to who pronounces the censure, see PARA 1367 ante.

3 See PARA 1373 post.

4 See PARA 1377 post. As to inhibition pendente lite, see PARA 1376 post; and as to inhibition on sequestration, see PARA 901 ante.

5 See PARA 1378 post.

6 See PARA 1382 post.

7 See PARA 1383 post.

8 Ecclesiastical Jurisdiction Measure 1963, s 49 (6). Where, however, a censure of suspension is pronounced a censure of inhibition may be pronounced for the same period: s 49 (6).

9 *Read v Bishop of Lincoln* [1892] AC 644, PC. In that case, which was concerned with matter of doctrine, ritual and ceremonial, the suggestion that the promoters (as to whom see PARA 1363 text and note 20 ante) were entitled to insist on a censure being pronounced, even if only a monition not to repeat the offence, was rejected.

10 See *Martin v Mackonochie* (1882) 7 PD 94 at 99, PC; *Read v Bishop of Lincoln* [1892] AC 644 at 669, PC. The censure to be pronounced for publishing and maintaining doctrines contrary to the Church's teaching is in

the court's discretion: *Bishop of Salisbury v Williams* (1862) 7 LT 472; revsd. on other matters (1864) 2 Moo PCCNS 375.

11 *Combe v De la Bere* (1881) 6 PD 157 at 159; *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 171, [1972] 1 All ER 1012 at 1021, 1022, distinguishing *Rice v Bishop of Oxford* [1917] P 181.

12 See PARA 1375 post.

13 See PARA 1384 post.

14 See PARA 892 et seq ante.

15 See PARA 1343 ante.

16 Ecclesiastical Jurisdiction Measure 1963, s 54.

UPDATE

1372 Censures generally

NOTE 1--1963 Measure Pts IV (ss 22-31) and V (ss 32-37) repealed: Clergy Discipline Measure 2003 Sch 2. As to disciplinary proceedings for misconduct from that date see PARA 1350A et seq.

NOTE 2--1963 Measure s 78 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 16--1963 Measure s 54 repealed: Clergy Discipline Measure 2003 Sch 2. See now para 1350B.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1373. Deprivation for ecclesiastical offence.

1373. Deprivation for ecclesiastical offence.

A censure of deprivation is the removal of a person from any preferment¹ which he holds and disqualification from holding any or any other preferment in the future except as stated below². No censure of deprivation on any archbishop or bishop or on any person in respect of any preferment the right to appoint to which is vested in the Queen (not being a parochial benefice) has effect unless and until confirmed by the Queen by Order in Council³. Where by virtue of any censure of deprivation a bishop, priest or deacon is disqualified from holding any preferment the disqualification does not extend to a preferment to which a diocesan bishop, with the relevant archbishop's consent and, in the case of a priest or deacon, the consent of the bishop of the diocese in which the proceedings were instituted, may appoint him, and ceases upon any such appointment if the archbishop when consenting to it so directs⁴. The censure of deprivation cannot be imposed for an offence involving matter of doctrine, ritual or ceremonial unless the court is satisfied that the accused has already been admonished on a previous occasion in respect of another offence of the same or substantially the same nature⁵. Censure of deprivation should not be pronounced unless it is merited by the gravity of the offence or of the totality of the offences concerned; it is not an appropriate remedy merely because it is desirable to part an incumbent from his parish and there is no other administrative method of doing so⁶. Deprivation may be followed by deposition from holy orders⁷. The incapacities of a deprived clergyman cease if he receives a free pardon from the Crown, and he will be restored to any preferment he previously held if it has not in the meantime been filled⁸.

1 For the meaning of 'preferment', see PARA 1290 note 1 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (a). It may be imposed for any offence under the Measure: s 49 (1).

3 Ibid s 49 (4).

4 Ibid s 49 (5).

5 Ibid s 49 (3).

6 *Bland v Archdeacon of Cheltenham* [1972] Fam 157 at 170, [1972] 1 All ER 1012 at 1021, 1022.

7 See PARA 1375 post.

8 Ecclesiastical Jurisdiction Measure 1963, s 53.

UPDATE

1373 Deprivation for ecclesiastical offence

TEXT AND NOTE 5--1963 Measure s 49(3) amended so as to refer solely to proceedings under that Measure: Clergy Discipline Measure 2003 Sch 1 para 7. As to penalties and proceedings for misconduct see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1374. Deprivation following secular proceedings.

1374. Deprivation following secular proceedings.

A priest or deacon or a bishop¹ or archbishop is liable to deprivation² if:

- 54 (1) he is convicted of an offence and a sentence of imprisonment (whether suspended³ or not) is passed on him⁴; or
- 55 (2) he has a decree of divorce or judicial separation granted against him and the court granting the decree held that the fact on which his wife was entitled to rely was adultery⁵, behaviour such that she could not reasonably be expected to live with him⁶ or desertion⁷ and, in the case of divorce, the decree has been made absolute⁸; or
- 56 (3) he is found to have committed adultery in a matrimonial cause⁹; or
- 57 (4) he has an affiliation order¹⁰ made against him¹¹; or
- 58 (5) he has a matrimonial order¹² made against him by a magistrates' court¹³; or
- 59 (6) he has an order made against him¹⁴ on the ground of his wilful neglect to maintain his wife or a child of the family¹⁵.

The court in which the conviction, decree, finding or order was had or made must cause a certificate of the conviction, decree, finding or order, signed by the registrar, clerk or other proper officer of the court, to be sent to the bishop of the diocese in which it sits, and it must be preserved in the registry of that diocese or of any other diocese to which it is sent by the bishop's direction¹⁶. The certificate is conclusive proof in an ecclesiastical court that the person to whom it relates has committed the act specified in it¹⁷.

A priest or deacon against whom such a conviction, decree, finding or order is had or made is liable without further trial to deprivation, as from the date when it becomes conclusive¹⁸, of any preferment¹⁹ he then holds and, whether or not he holds preferment, disqualification from holding preferment, although this is subject to the bishop's power²⁰ to appoint him to one²¹. Within twenty-eight days after the date on which the conviction etc. becomes conclusive the bishop of the relevant diocese²² must refer the case to the relevant archbishop with his own recommendation as to the action to be taken and send him a copy of any written representations the priest or deacon has made to him²³. Within two months after that date the archbishop must make a declaration of deprivation and disqualification unless, on considering all the circumstances including the bishop's recommendation and any representations sent to him, he determines that no such declaration is to be made, in which case he must inform the bishop and the priest or deacon accordingly²⁴. Such a declaration is made either by the archbishop personally or by the bishop or his commissary, and before making it the archbishop or bishop must require the provincial or, as the case may be, diocesan registrar to give the priest or deacon, if practicable, not less than fourteen days' notice of the time and place where it will be made so that he can be present if he wishes²⁵. When the declaration is made the archbishop or bishop must be attended by the relevant registrar, and the declaration must be reduced to writing and a copy filed in the registry of the relevant diocese²⁶.

A bishop or archbishop against whom such a conviction, decree, finding or order is had or made is similarly liable to deprivation and disqualification²⁷. Within two months after the sentence etc. becomes conclusive a declaration must be made accordingly in the case of a bishop) by the relevant archbishop²⁸ or (in the case of an archbishop) by the other archbishop unless, on consideration of all the circumstances including any written representations made to him by

the bishop or archbishop concerned, he determines not to make such a declaration, in which case he must inform the bishop or archbishop concerned accordingly²⁹. Before making such a declaration the archbishop must require his provincial registrar to give the bishop or archbishop concerned, if practicable, not less than fourteen days' notice of the time and place when it will be made so that he can be present if he wishes³⁰. When the declaration is made the archbishop must be attended by his provincial registrar, and the declaration must be reduced to writing and filed in his provincial registry³¹.

Where such a declaration of deprivation or of disqualification is made against a priest or deacon, bishop or archbishop, it takes effect subject to the provisions of the Ecclesiastical Jurisdiction Measure 1963 relating to censures³², and the like consequences ensue in all respects as if he had been found guilty of an offence under the Measure and such a censure had been pronounced against him³³. In particular, upon a declaration of deprivation being made he is liable to be deposed from holy orders³⁴.

1 'Bishop' means a diocesan bishop, a suffragan bishop commissioned by a diocesan bishop and any other bishop: Ecclesiastical Jurisdiction Measure 1963, s 56 (5); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

2 Where immediately before 9th July 1974 a person was liable to have a declaration of deprivation and disqualification made against him under the Ecclesiastical Jurisdiction Measure 1963, s 55 or s 56, as originally enacted (and not in the substituted form in which those provisions are covered in this paragraph) those provisions continue to apply to that person in their original form: Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (5).

3 'Suspended sentence' is defined as a sentence to which an order under the Criminal Justice Act 1967, s 39 (1), relates: Ecclesiastical Jurisdiction Measure 1963, s 55 (7); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1. The Criminal Justice Act 1967, s 39 (1), was repealed by the Powers of Criminal Courts Act 1973, s 56 (2), Sch. 6, and replaced by s 22 (1) as from a date a few days before the commencement of the Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1: Powers of Criminal Courts Act 1973 (Commencement No. 1) Order 1974, S.I. 1974 No. 941. See, however, the Interpretation Act 1889, s 38; Interpretation Measure 1925, s 1, the effect of which is that 'suspended sentence' means a sentence to which an order under the Powers of Criminal Courts Act 1973, s 22 (1), relates.

4 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (a), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

5 See the Matrimonial Causes Act 1973, s 1 (2) (a), and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 347.

6 See *ibid* s 1 (2) (b).

7 See *ibid* s 1 (2) (c).

8 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (b), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

9 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (c), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

10 'Affiliation order' means an order under the National Assistance Act 1948, s 44, the Children Act 1948, s 26, the Affiliation Proceedings Act 1957, s 4, or the Ministry of Social Security Act 1966, s 24: Ecclesiastical Jurisdiction Measure 1963, s 55 (7); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

11 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (d), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

12 *Ie* under the Matrimonial Proceedings (Magistrates' Courts) Act 1960, s 2.

13 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (e), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

14 *Ie* under the Matrimonial Causes Act 1973, s 27. See generally MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

15 Ecclesiastical Jurisdiction Measure 1963, ss 55 (1) (f), 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1. By virtue of s 2 (4) this applies also to orders under the Matrimonial Proceedings and Property Act 1970, s 6 (repealed).

16 Ecclesiastical Jurisdiction Measure 1963, s 79 (3); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (2) (c); Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, r 52 (4).

17 Ecclesiastical Jurisdiction Measure 1963, s 79 (2); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (2) (c).

18 As to when a sentence, decree, finding or order becomes conclusive, see PARA 1385 post.

19 For the meaning of 'preferment', see PARA 1290 note 1 ante.

20 Ie under the Ecclesiastical Jurisdiction Measure 1963, s 49 (5); see PARA 1373 ante. For this purpose the bishop is the bishop of the relevant diocese as defined in note 22 infra: s 57; Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (1).

21 Ecclesiastical Jurisdiction Measure 1963, s 55 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

22 In this context 'relevant diocese' means (1) the diocese in which the priest or deacon holds preferment at the date on which the conviction etc. becomes conclusive, or (2) if he is not then holding preferment, but is residing in a diocese, the diocese in which he is then residing, or (3) if he then neither holds preferment nor resides in a diocese, the diocese in which he last held preferment before that date: Ecclesiastical Jurisdiction Measure 1963, s 55 (7); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

23 Ecclesiastical Jurisdiction Measure 1963, s 55 (2); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1. During a vacancy in the see or the absence abroad or illness of the relevant archbishop his functions are to be exercised by the other archbishop: Ecclesiastical Jurisdiction Measure 1963, s 55 (6); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

24 Ecclesiastical Jurisdiction Measure 1963, s 55 (3); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

25 Ecclesiastical Jurisdiction Measure 1963, s 55 (4); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

26 Ecclesiastical Jurisdiction Measure 1963, s 55 (5); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

27 Ecclesiastical Jurisdiction Measure 1963, s 56 (1); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

28 In the absence or incapacity of the relevant archbishop, or if there is a vacancy, the declaration must be made by the other archbishop: Ecclesiastical Jurisdiction Measure 1963, s 56 (1), (4); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

29 Ecclesiastical Jurisdiction Measure 1963, s 56 (1), (4); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

30 Ecclesiastical Jurisdiction Measure 1963, s 56 (2); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

31 Ecclesiastical Jurisdiction Measure 1963, s 56 (3); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 1.

32 Ie the provisions of the Ecclesiastical Jurisdiction Measure 1963, Part VIII (ss. 49-54).

33 Ibid s 57. As to fees payable in connection with deprivation, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table V.

34 Ecclesiastical Jurisdiction Measure 1963, s 57. See ss 50, 51, and PARA 1375 post.

UPDATE

1374 Deprivation following secular proceedings

TEXT AND NOTES--Repealed. 1963 Measure Pts IV (ss 22-31), V (ss 32-37), IX (ss 55-57), and s 79 repealed: Clergy Discipline Measure 2003 Sch 2. See now para 1350B.

NOTE 3--Interpretation Act 1889, Measure 1925 s 1 now consolidated: Interpretation Act 1978. 1973 Act s 23(1) now Powers of Criminal Courts (Sentencing) Act 2000 s 119(1), (2) (repealed by the Criminal Justice Act 2003).

TEXT AND NOTES 10, 11--Repealed: Family Law Reform Act 1987 Sch 4.

NOTE 13--1963 Measure s 55(1)(e) amended: Church of England (Miscellaneous Provisions) Measure 1992 Sch 3 para 9.

TEXT AND NOTE 23--'Within twenty-eight days ... conclusive' omitted: Church of England (Miscellaneous Provisions) Measure 1992 s 7(a)(i).

TEXT AND NOTE 24--'Within two months after that date' omitted: 1992 Measure s 7(a)(ii). A declaration cannot be made after the expiry of three years beginning with the date on which the sentence, decree, finding or order becomes conclusive: 1963 Measure s 55(3A); 1992 Measure s 7(a)(iii).

TEXT AND NOTE 29--'Within two months after the sentence etc becomes conclusive' omitted: 1992 Measure s 7(b)(i). A declaration cannot be made after the expiry of three years beginning with the date on which the sentence, decree, finding or order becomes conclusive: 1963 Measure s 56(1A); 1992 Measure s 7(b)(ii).

NOTE 33--As to current fees orders, see PARA 1204.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1375. Deposition from holy orders.

1375. Deposition from holy orders.

When a censure of deprivation¹ is pronounced on any priest or deacon his diocesan bishop may be sentence without any further legal proceedings depose him from holy orders², although before doing so he must serve on the priest or deacon and on the relevant provincial registrar notice of his intention to do so and the priest or deacon may then within one month appeal to the relevant archbishop³. When a censure of deprivation is pronounced in pursuance of proceedings under the Ecclesiastical Jurisdiction Measure 1963 on an archbishop or bishop the Upper House of the relevant convocation may by resolution depose him from holy orders⁴, but must first notify him, consider any written representation he may make and afford him an opportunity of being heard before it personally⁵.

The effect of the deposition is the same as if, more than six months before the day on which the disqualification takes effect, he had executed a deed of relinquishment under the Clerical Disabilities Act 1870⁶ which the bishop had on that day caused to be registered in the diocesan registry⁷. The incapacities of a deposed clergyman cease, however, if he receives a free pardon from the Crown, and he will be restored to any preferment he previously held if it has not in the meantime been filled⁸.

1 See PARAS 1373, 1374 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 50. For fees payable in connection with deposition, see the Legal Officers Fees Order 1975, S.I. 1975 No. 1087, Schedule, Table V.

3 Ecclesiastical Jurisdiction Measure 1963, s 50 proviso. If the diocesan is the archbishop appeal lies to the other archbishop: s 50 proviso. The bishop must not proceed to the deposition until the time for appealing is passed or any appeal has been dismissed: s 50 proviso. As to notice and the appeal, see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, S.I. 1964 No. 1755, rr 49, 50, Appendix, Forms 48, 49, and Court Forms.

4 Ecclesiastical Jurisdiction Measure 1963, s 51.

5 Ibid s 51 proviso. The representations must be made within a month of service of the notice: s 51 proviso. As to the notice, see the Ecclesiastical Jurisdiction (Discipline) Rules 1964, r 51, Appendix, Form 50.

6 See PARA 686 ante.

7 See the Ecclesiastical Jurisdiction Measure 1963, s 52.

8 Ibid s 53.

UPDATE

1375 Deposition from holy orders

TEXT AND NOTE 2--1963 Measure s 50 amended by the Clergy Discipline Measure 2003 Sch 1 para 8, so as to refer only to proceedings under that Measure. As to penalties and proceedings for misconduct see PARA 1350A et seq.

NOTE 2--As to current fees orders, see PARA 1204.

TEXT AND NOTE 7--1963 Measure s 52 amended by the Clergy Discipline Measure 2003 Sch 1 para 9, so as to refer only to deposition under that Measure. As to penalties and proceedings for misconduct see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1376. Inhibition pendente lite.

1376. Inhibition pendente lite.

Where a priest or deacon is accused of an offence under the Ecclesiastical Jurisdiction Measure 1963 or in a temporal court of any criminal offence or any act constituting an ecclesiastical offence, and it appears to the bishop in whose diocese the accused holds any preferment that from the nature of the offence charged it is desirable in the interests of the church that he should do so, the bishop may at any time during which proceedings in respect of any such charge are pending cause a notice to be served on the priest or deacon inhibiting him from performing any services of the church within his diocese from a specified date until the proceedings are concluded¹.

Where such a notice is served on a priest who is the incumbent of a benefice he may, within fourteen days, nominate to the bishop a fit person to perform these services during the inhibition, and if the bishop approves the nominated person he must licence him accordingly². A priest or deacon who is inhibited must not interfere with the person performing the services³.

The bishop may at any time revoke the inhibition or any licence so granted⁴.

1 Ecclesiastical Jurisdiction Measure 1963, s 77 (1).

2 Ibid s 77 (2). If he does not approve him, or in default of or pending nomination, the bishop must make such provision for those services as he deems necessary: s 77 (3).

3 Ibid s 77 (5).

4 Ibid s 77 (4). If he revokes a licence he must notify the licensee and the incumbent, who may make a fresh nomination as if the notice were a notice under s 77 (1): s 77 (4).

UPDATE

1376 Inhibition pendente lite

TEXT AND NOTES--Repealed. 1963 Measure s 77: Clergy Discipline Measure 2003 Sch 2. As to suspension during disciplinary proceedings under the 2003 Measure see ss 36, 37; and PARA 1350A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1377. Inhibition for ecclesiastical offence.

1377. Inhibition for ecclesiastical offence.

A censure of inhibition is the disqualification of a clergyman for a specified time from exercising the functions of his order¹. Such a censure may be pronounced in respect of the same offence as that for which a censure of suspension is pronounced and for the same period². It may not be imposed in respect of an offence involving matter of doctrine, ritual or ceremonial unless the court is satisfied that the accused has already been admonished on a previous occasion in respect of another offence of the same or substantially the same nature³.

1 Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (b). It may be imposed for any offence under that Measure: s 49 (1). As to restrictions to which a person is subject during inhibition, see s 49 (2), and PARA 1380 post.

2 Ibid s 49 (6).

3 Ibid s 49 (3).

UPDATE

1377 Inhibition for ecclesiastical offence

TEXT AND NOTE 3--1963 Measure s 49(3) amended so as to refer solely to proceedings under that Measure: Clergy Discipline Measure 2003 Sch 1 para 7. As to penalties and proceedings for misconduct see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1378. Suspension.

1378. Suspension.

A censure of suspension is disqualification of a person for a specified time from exercising or performing without the bishop's leave any right or duty of or incidental to his preferment¹ or from residing in the house of residence of his preferment or within such distance of it as is specified in the censure². It may not be imposed in respect of an offence involving matter of doctrine, ritual or ceremonial unless the court is satisfied that the accused has already been admonished on a previous occasion in respect of another offence of the same or substantially the same nature³.

1 For the meaning of 'preferment', see PARA 1290 note 1 ante.

2 Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (c). It may be imposed for any offence under that Measure: s 49 (1). As to inhibition being imposed in respect of the same offence, see PARA 1377 ante; and as to restrictions to which a person is subject during suspension, see s 49 (2), and PARA 1380 post.

3 Ibid s 49 (3).

UPDATE

1378 Suspension

TEXT AND NOTE 3--1963 Measure s 49(3) amended so as to refer solely to proceedings under that Measure: Clergy Discipline Measure 2003 Sch 1 para 7. As to penalties and proceedings for misconduct see PARA 1350A et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1379. Performance of duties of suspended or inhibited person.

1379. Performance of duties of suspended or inhibited person.

Where an archbishop is suspended or inhibited by censure the functions which he is thereby unable to perform must be performed by the other archbishop¹, and where a diocesan or suffragan bishop is suspended or inhibited by censure the relevant archbishops or, as the case may be, diocesan bishop may appoint another bishop to perform his functions².

Where a priest or deacon is suspended or inhibited by censure the bishop in whose diocese the priest or deacon holds preferment may appoint some person or persons to perform the duties of the preferment, and may assign such part of the net stipend of the benefice as he thinks fit and may, if necessary, sequester the profits of the benefice for the payment of the stipend so assigned³. He may require the person so appointed to reside in the parsonage house belonging to the benefice, and may assign to him the use of the whole or any part of that house and its offices, gardens and appurtenances without payment of any rent⁴. A person so residing in the parsonage house is liable to pay the rates payable in respect of the house, and any sequestrator appointed during the suspension or inhibition has power to deduct from that person's stipend any payments for which he is so liable⁵.

1 Ecclesiastical Jurisdiction Measure 1963, s 71 (1).

2 Ibid s 71 (2), (3).

3 Ibid s 71 (4): see PARA 908 ante.

4 Ibid s 72 (1). If possession of the premises is not given up to the person appointed, and until it is so given up, the bishop may direct that the profits of the benefice arising from the sequestration of it be applied as if they arose under a sequestration for non-residence (as to which see the Pluralities Act 1838, ss 54, 56, and PARAS 697, 905 ante): Ecclesiastical Jurisdiction Measure 1963, s 72 (3). The right of residence and other rights determine on the determination of the person's appointment: s 72 (4).

5 Ecclesiastical Jurisdiction Measure 1963, s 72 (2); Repair of Benefice Buildings Measure 1972, s 35, Sch. 2.

UPDATE

1379 Performance of duties of suspended or inhibited person

TEXT AND NOTES--1963 Measure ss 71, 72 apply, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 3--Now the bishop may assign such part as he thinks fit of any one or more of the following, ie the guaranteed annuity, the personal grant, if any, and the projects of the benefice: Endowments and Glebe Measure 1976 Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1380. Restrictions on suspended or inhibited person.

1380. Restrictions on suspended or inhibited person.

Where a person is suspended or inhibited by censure from discharging all or any of the duties attached to any office held by him he must not interfere with any person appointed to discharge any of those duties¹, he must not reside in or occupy any house of residence belonging to his office unless, in the case of an incumbent of a parochial benefice, the bishop for special reasons permits him to do so², and he will not be liable under any penalty or forfeiture for non-residence³. Subject to the bishop's directions any such incumbent is not to receive any part of the income of the benefice while he remains resident within ten miles from the parish or other principal church of the parish or other area in which he had the cure of souls prior to the inhibition⁴.

A person suspended or inhibited by censure is not to be re-admitted to his benefice or permitted to exercise the functions of his order unless he satisfies the bishop (or, if the person censured is a bishop, the Upper House of the relevant convocation) of his good conduct during the term of his suspension or inhibition⁵.

1 Ecclesiastical Jurisdiction Measure 1963, s 74 (1) (a).

2 Ibid s 74 (1) (b), (2).

3 Ibid s 74 (1) (c). As to non-residence, see PARA 692 ante.

4 Ibid s 74 (3).

5 Ibid s 49 (2).

UPDATE

1380 Restrictions on suspended or inhibited person

TEXT AND NOTES 1-4-- 1963 Measure s 74 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 1--The words 'for a specified time' should be read after 'inhibited by censure': 1963 Measure s 74(1) (amended by the Clergy Discipline Measure 2003 Sch 1 para 13).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1381. Rights of patronage during suspension or inhibition.

1381. Rights of patronage during suspension or inhibition.

When by virtue of a censure against him a person is suspended or inhibited from discharging all or any of the duties attaching to his preferment¹, any right of patronage² vested in him by virtue of his preferment vests during the period of suspension or inhibition in the person entitled to appoint to the preferment³. In the case of a diocesan bishop or an archbishop the right of patronage vests in the relevant or, as the case may be, the other archbishop³. If the incumbent is himself the patron of his benefice the right of patronage vests in the archbishop of the relevant province⁴.

1 For the meaning of 'preferment', see PARA 1290 note 1 ante.

2 As to rights of patronage, see PARA 776 et seq ante.

3 Ecclesiastical Jurisdiction Measure 1963, s 76 (1).

4 Ibid s 76 (2).

UPDATE

1381 Rights of patronage during suspension or inhibition

TEXT AND NOTES--1963 Measure s 76 applies, with modifications, for the purposes of the Clergy Discipline Measure 2003 (disciplinary proceedings for misconduct): see 2003 Measure s 35.

TEXT AND NOTE 1--The words 'for a specified time' should be read after 'inhibited by censure': 1963 Measure s 76(1) (amended by the Clergy Discipline Measure 2003 Sch 1 para 14).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1382. Monition.

1382. Monition.

A censure of monition is an order to do or refrain from doing a specified act¹ the omission or commission of which constitutes an ecclesiastical offence or to rectify some previous act the commission of which was an ecclesiastical offence, and is usually accompanied by an order for costs against the accused². It may prohibit not merely the continuance or repetition of the same act but also the commission of acts of the same or a similar nature³.

1 Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (d). It may be imposed for any offence under that Measure: s 49 (1).

2 3 Burn's Ecclesiastical Law (4th Edn) 191. Monition is described in the books as of a preparatory nature, that is to say as a warning or command to be followed in case of disobedience by some coercive sanction. It appears to have been a general, though not an invariable, rule of the canon law that monition ought to precede suspension or excommunication. It may be, and in practice it often is, issued for various purposes at the beginning or during the progress of an ecclesiastical cause; and it may be, and sometimes is, the sentence or part of a sentence upon the merits pronounced at the end of the cause: 1 Oughton's *Ordo Judiciorum* 137, observat. 3; Gib Cod 1046, 1048; *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 433, HL, per Lord Selborne LC; *Enraght v Lord Penzance* (1882) 7 App Cas 240 at 247, HL, per Lord Blackburn. The ecclesiastical courts being organs of the church for enforcing discipline, the power to make orders to do or abstain from doing something ascertained respectively to be right or wrong is part of their very essence; and without such power their use in many cases would be gone: *Martin v Mackonochie* (1879) 4 QBD 697 at 770, CA, per Lord Coleridge CJ. As to monition to enforce residence, see PARA 697 ante.

3 *Cox v Goodday* (1811) 2 Hag Con 138 at 142; *Enraght v Lord Penzance* (1882) 7 App Cas 240, HL.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1383. Rebuke.

1383. Rebuke.

The censure of rebuke is the least severe censure which may be imposed for an offence under the Ecclesiastical Jurisdiction Measure 1963¹. Whilst condemning the acts constituting the offence the rebuke imposes no disqualification or penalty; it may, however, be accompanied by an order for costs against the accused.

¹ Ecclesiastical Jurisdiction Measure 1963, s 49 (1) (e).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1384. Excommunication.

1384. Excommunication.

An ecclesiastical court formerly had power to pronounce sentence of excommunication for an offence of ecclesiastical cognisance¹, but is no longer among the censures which can pronounced by such a court². It seems, however, that the possibility of an extra-judicial declaration that a person is excommunicate is not excluded³ and this would presumably, in the absence of reconciliation, disqualify him for any office in the Church for which communicant status is a legal requirement⁴.

1 *Kemp v Wickes* (1809) 3 Phillim 264 at 271, 272, per Sir John Nicholl. A person excommunicate was subject to temporal penalties, including imprisonment and, until the Ecclesiastical Courts Act 1813, deprivation of certain civil rights, including the right to make a will or to bring certain action in the civil courts: see the Report of the Archbishops' Commission on Ecclesiastical Courts (SPCK 1954) 19, 20.

Under the old procedure the bishop signified the excommunication by issuing a significant, whereupon the civil courts issued a writ de excommunicato capiendo to the sheriff. After the Act of 1813 a person who refused to obey an ecclesiastical court was not excommunicated but his contumacy was signified to the civil courts who imprisoned him by a writ de contumace capiendo. Old enactments permitting excommunication have all been repealed; these included the Brawling Act 1551, s 2; Ecclesiastical Courts Act 1813, ss 2, 3; Canons Ecclesiastical (1603) 2-12, 139-141.

2 Ecclesiastical Jurisdiction Measure 1963, s 49. See also s 82 (4), which provides that no person shall be libel to suffer imprisonment in consequence of being excommunicated.

3 See the Revised Canons Ecclesiastical, Canon B38 para 2 (amended by Amending Canon No. 3), which allows a minister to refuse burial according to the rites of the Church of England where the deceased has been declared excommunicate for some grievous or notorious crime and there is no evidence of his repentance (see PARA 1041 ante); and Canon B16 para 1, whereby notorious offenders are not be admitted to Holy Communion: see the Book of Communion; Prayer Book (Miscellaneous Provisions) Measure 1965, s 3 (1) (repealed); Church of England (Worship and Doctrine) Measure 1974, Sch. 3 para 4; and PARA 978 ante. The wording of the Ecclesiastical Jurisdiction Measure 1963, s 82 (4), leaves open the possibility of such extra-judicial 'lesser excommunication'. See also Articles of Religion 33, which declares that 'that person which by open denunciation of the Church is rightly cut off from the unity of the Church, and excommunicated, ought to be taken ... as an Heathen and Publican, until he be openly reconciled by penance, and received into the Church by a Judge that hath authority thereunto'; and see Matt. 18: 15-17.

4 Consider eg the case of eligibility as a representative of the laity on the parochial church council or on any of the various synods: see the Church Representation Rules, rr 9 (1) (b), 25 (3), 31 (1), contained in the Synodical Government Measure 1969, Sch. 3 (amended by S.I. 1973 No. 1865), and PARAS 420, 510, 529 ante.

UPDATE

1384 Excommunication

NOTES 2, 3--1963 Measure s 82 repealed: Statute Law (Repeals) Act 2004.

NOTE 4--Rule 31(1) further amended: SI 1980/178, SI 2004/1889.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/8. ECCLESIASTICAL JURISDICTION/(6) DISCIPLINARY PROCEEDINGS/(v) Censures and other Penalties/1385. When conviction, sentence, decree, finding or order becomes conclusive.

1385. When conviction, sentence, decree, finding or order becomes conclusive.

A conviction, sentence, decree, finding or order becomes conclusive for the purposes of the Ecclesiastical Jurisdiction Measure 1963 (1) where there has been an appeal, on the date when the appeal is dismissed or abandoned or proceedings on it are finally conclude¹; (2) if there is no appeal, on the expiration of the time limited for appealing or, where no time is so limited, of two months from the date of the conviction, sentence, decree, finding or order²; (3) in the case of a conviction, decree or order against which there is no right of appeal, from the date of the conviction, decree or order³.

1 Ecclesiastical Jurisdiction Measure 1963, s 79 (1) (a). If it is varied on appeal the conviction etc. is conclusive only as varied, and so far as it is reversed on appeal it ceases to have effect: s 79 (1) (a).

2 Ibid s 79 (1) (b); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (2) (a).

3 Ecclesiastical Jurisdiction Measure 1963, s 79 (1) (c); Ecclesiastical Jurisdiction (Amendment) Measure 1974, s 2 (2) (b).

UPDATE

1385 When conviction, sentence, decree, finding or order becomes conclusive

TEXT AND NOTES--Repealed. 1963 Measure s 79 repealed: Clergy Discipline Measure 2003 Sch 2. As to when a conviction or decree becomes conclusive for the purposes of the 2003 Measure see s 40; and PARA 1350A.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/ (1) INTRODUCTION/1386. Recognition by the state.

9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND

Co-operation between the Church of England and other churches

The Church of England (Ecumenical Relations) Measure 1988 makes provision for local co-operation between the Church of England and other designated churches. Such co-operation may take the form of joint worship, the use by other churches of Church of England places of worship for the conduct of worship and participation in local ecumenical projects. See further PARA 1186A.

(1) INTRODUCTION

1386. Recognition by the state.

All religious bodies enjoy the same general recognition by law¹, strengthened in the single case of the Church of England by the circumstances of its connection with the state, and modified in the case of other religious bodies by such special enactments as survive to mark in each case the history of its evolution.

In the following paragraphs are examined the distinctive marks which attend the recognition of certain religious bodies, all of which have in common the fact that they are not connected with the state.

¹ As to the recognition of churches generally, see PARAS 309-312 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/ (1) INTRODUCTION/1387. Terminology.

1387. Terminology.

The religious bodies with which this part of the title is concerned have commonly been known as nonconformist or dissenting bodies, terms which have their origin in the Acts of Uniformity¹, refusal to comply with which rendered the person so refusing liable to penalties. Those who refused to go to church and worship after the manner of the Church of England were classified as recusants². This terminology has, however, been rendered obsolete³, and there is now no convenient general term embracing all those who belong to religious bodies outside the established Church, the word 'nonconformist' being usually employed to signify protestants who dissent from the government and ritual of the Church of England⁴.

The religious bodies which are considered in this part of the title are Roman Catholics⁵, protestant Nonconformists⁶, Friends⁷, Unitarians⁸ and Jews⁹ and others¹⁰. There is also mention of those of no faith¹¹.

1 See especially the Act of Uniformity 1662. Historically protestants should be described as non-conformists and Roman Catholics as dissenters, but there is inconsistency of usage; thus the Roman Catholic Charities Act 1832, s 1, refers to 'protestant dissenters'.

2 Canons Ecclesiastical (1603) 65 (revoked). The term was later applied mainly to Roman Catholics. The duty is placed upon the Church of England clergy and people to do their utmost to avoid occasions of strife and to seek in penitence and brotherly charity to heal divisions among Christians which impair unity in the Church of Christ and grievously hinder witness to the Gospel: Revised Canons Ecclesiastical, Canon A8. See also the Book of Common Prayer, prayer for unity at the end of the Accession Service.

3 Ie by the passing of the Toleration Act 1688 (repealed) and the Roman Catholic relief Act 1829 (repealed in part).

4 In England the protestant nonconformist churches are now generally described as the 'Free Churches', although in Scotland the term has a special connotation.

The British Council of Churches, formed in 1942, is a fellowship of Christian churches in the British Isles, and is an associated national council of churches of the World Council of Churches. Its members include the Church of England and most of the Christian denominations which are located or represented in Great Britain, among them being the Greek Orthodox Church; and the Roman Catholic Church sends observers to the council: see the Church of England Year Book 1975, pp. 245-248.

5 See PARA 1388 et seq post.

6 See PARAS 1401 et seq., post.

7 Ie Quakers: see PARAS 1419-1421 post.

8 See PARA 1422 post.

9 See PARA 1423 et seq post.

10 See PARA 1433 et seq post.

11 See PARA 1433 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1388. Distinctive features of Roman Catholicism.

(2) ROMAN CATHOLICS

1388. Distinctive features of Roman Catholicism.

The distinctive marks of the religious body known as Roman Catholics¹ have their origin in two facts, namely that that body, as distinct from protestant nonconforming religious bodies, has its central authority outside England and drives the whole of its system of organisation from abroad; and that at earlier periods in English history the Church of England was within that system of organisation, and that jurisdiction was claimed and from time to time exercised over it by that central authority².

A long series of statutes passed in the centuries succeeding the disruption of the ties between the Church of England and the see of Rome has, in spite of numerous repeals, left many traces of the conflict, and hence the law as it affects the Roman Catholic Church in England consists not only of provisions affecting the members of that body or even the whole body of its members in this country, but also of provisions which are directed to limiting or excluding the exercise of the powers of the see of Rome within the realm³.

1 See generally CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 Cf. para 304 et seq ante.

3 The statutes are referred to in the following paragraphs.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1389. Exclusion from throne and certain offices.

1389. Exclusion from throne and certain offices.

No Roman Catholic may occupy the throne, for any person who is either in communion with the Church of Rome or marries a person in such communion is expressly excluded from the succession¹.

A Roman Catholic may hold the office of Lord Chancellor² and provision may then be made by the Queen in Council for the exercise of any or all the visitational or ecclesiastical functions normally performed by him and any patronage to livings normally in his gift to be performed by the Prime Minister or any other minister of the Crown³.

1 Bill of Rights (1688); Act of Settlement (1700), s 2.

2 Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, s 1, enacted to resolve certain doubt which had hitherto existed: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477, where these doubts are discussed. It appears that a Roman Catholic may still not be High Commissioner to the General Assembly of the Church of Scotland: see the Roman Catholic Relief Act 1829, s 12.

3 Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, s 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1390. Status of Roman Catholic.

1390. Status of Roman Catholic.

A Roman Catholic in his capacity of a private citizen is on an equal footing with all other subjects of the Crown, earlier disabilities having been removed by statute. Thus no special oaths are required from him, and those generally prescribed, namely the oath of allegiance and official and judicial oaths¹, are not of such a nature as to offend his conscience. There is no bar to his holding real or personal property², or exercising the parliamentary vote³, and, if a layman⁵ and otherwise qualified, he is eligible for a seat in the House of Common, and if elected may sit and vote there⁶. He may hold civil and military posts under the Crown⁷, and be a member of or hold office under any lay corporation⁸.

1 See the Promissory Oaths Acts 1868 and 1871.

2 Roman Catholic Relief Act 1829, s 23; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed).

3 Roman Catholic Relief Act 1829, s 5; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed); Statute Law (Repeals) Act 1973, ss 1 (1), 2, Sch. 1, Part XIII.

4 Roman Catholic Relief Act 1829, s 2; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed). He may be Lord Chancellor: see PARA 1389 ante.

5 As to persons in holy orders in the Roman Catholic Church, see the Roman Catholic Relief Act 1829, s 9, and PARA 1396 post.

6 Ibid s 2; Promissory Oaths Act 1871, s 1, Part II (repealed).

7 Roman Catholic Relief Act 1829, s 10; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed).

8 Roman Catholic Relief Act 1829, s 14; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed).

UPDATE

1390 Status of Roman Catholic

NOTES 2-4--1829 Act ss 2, 5, 23 repealed: Statute Law (Repeals) Act 1978.

NOTE 5--Roman Catholic Relief Act 1829 s 9 repealed: House of Commons (Removal of Clergy Disqualification) Act 2001 Sch 2.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1391. Exclusion from Anglican ecclesiastical offices.

1391. Exclusion from Anglican ecclesiastical offices.

A Roman Catholic is disqualified from holding or enjoying or exercising any office, place or dignity in the Church of England, or in any of its ecclesiastical courts or any court of appeal from them, or in cathedral, collegiate or ecclesiastical establishment or foundation¹.

¹ Roman Catholic Relief Act 1829, s 16.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1392. Offices in universities and schools.

1392. Offices in universities and schools.

A Roman Catholic may take any degree (other than a degree in divinity¹) or hold any office in the Universities of Oxford, Cambridge or Durham, or the colleges belonging to them², except that of Professor of Divinity³, or any for which holy orders in the Church of England are required⁴, but he may not hold an office in the colleges of Eton, Winchester or Westminster, or save as mentioned above, any college or school within the realm⁵.

1 University status have modified this restriction: see EDUCATION.

2 Universities Tests Act 1871, ss 3, 8. This Act repealed so much of the Roman Catholic Relief Act 1829, s 16, as it was necessary to repeal for its purposes, but as it deals only with the Universities of Oxford, Cambridge and Durham, any other universities for which tests are employed are not affected by it. So far as offices in colleges are concerned, the Act deals with colleges then subsisting. There is nothing to prevent the creation of new colleges the offices in which are confined to the members of any denomination: *Re v Hertford College* (1878) 3 QBD 693, CA. As to university offices at Oxford or Cambridge, see the Universities of Oxford and Cambridge Act 1877, s 58.

3 Universities Tests Act 1871, ss 2, 3.

4 Ibid s 3 proviso (1). Nothing in the Act empowers a person to take an office, other than an office in the university or a college therein, where such office, by reason of a degree being a necessary qualification, was before 1871 confined to members of the Church of England: s 3 proviso (2).

5 Roman Catholic Relief Act 1829, s 16.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1393. Roman Catholic schoolteachers.

1393. Roman Catholic schoolteachers.

A Roman Catholic, whether lay or clerical, is not debarred from acting as a teacher or schoolmaster¹, but he may not hold the master-ship of a school or royal foundation or endowed school for the education of youth, or of an endowed college or college of royal foundation except in the Universities of Oxford, Cambridge or Durham². A Roman Catholic who enters the Universities of Oxford, Cambridge or Durham as an undergraduate is not to be required to attend any lectures to which he, or , if he is under age, his parents or guardians on his behalf, object on religious grounds³. Similar provision for securing liberty of a conscience was made in the case of day schools and boarding schools under the Endowed Schools Acts⁴, and is made in the case of county and voluntary schools by the Education Act 1944⁵.

1 Roman Catholic Relief Act 1791, s 13; Promissory Oaths Act 1871, s 1, Sch. 1, Part II (repealed).

2 Roman Catholic Relief Act 1791, s 14. So much of this section as relates to any of the Universities of Oxford, Cambridge and Durham is repealed by the Universities Tests Act 1871. As to the repeal of the disabilities to hold posts at the universities, see PARA 1392 note 2 ante.

3 Ibid s 7.

4 Endowed Schools Act 1869, ss 15, 16 (repealed).

5 See the Education Act 1944, ss 25-29. No person is disqualified by reason of his religious belief from teaching in a county or voluntary school or from being otherwise employed for the purposes of the school: s 30.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1394. Church patronage.

1394. Church patronage.

A Roman Catholic may own the advowson and be the legal patron of a benefice in the Church of England, and (subject to the general law¹) may buy or sell such an advowson, but he may not exercise the right of presentation himself² or by the agency of another³, and if he attempts to do so the presentation is void⁴. Where a Roman Catholic as a private person is the legal patron of a benefice, the right of presentation is vested in the University of Oxford or the University of Cambridge, according to the county in which the benefice is situated⁵. If he is the holder of an office under the Crown to which there attaches a right of presentation to benefices, the right of presentation is exercised by the Archbishop of Canterbury for the time being⁶. For a Roman Catholic to advise the Crown as to an appointment to any office or preferment in the Church of England is a high misdemeanour and disables the offender from ever holding any office, civil or military, under the Crown⁷. If he is a member of any lay corporation he may not vote at or in any way join in the election, presentation or appointment of any person to a benefice, or any office or place belonging to or in connection with the Church of England, which is in the gift, patronage or disposal of the corporation⁸. A Roman Catholic, or a trustee or mortgagee for or under him, cannot make a valid grant of an advowson or right of patronage except in good faith for a full and valuable consideration to some protestant purchaser or purchasers for the benefit only of a protestant or protestants; nor can a Roman Catholic devise an advowson or right of patronage with intent to secure its benefit to his family⁹.

1 As to advowsons generally, see PARA 776 et seq ante.

2 Presentation of Benefices Act 1605, s 13; Presentation of Benefices Act 1688, s 2; Benefices Act 1898, s 7. If a Roman Catholic is joint patron with another person who is not a Roman Catholic, the patronage is to be exercised wholly by that other: *Edwards v Bishop of Exeter* (1839) 5 Bing NC 652.

3 Presentation of Benefices Act 1605, s 13; Presentation of Benefices Act 1688, s 2; Presentation of Benefices Act 1713, s 1; Residence of Incumbents Act 1869, s 1; Benefices Act 1898, s 7. Where the presentation was made by a college on the nomination of a Roman Catholic patron, and it appeared on the face of it not to have been made in right of the college but on the nomination of the patron, it was held void: *Boyer v Bishop of Norwich* [1892] AC 417, PC.

4 *Boyer v Bishop of Norwich* [1892] AC 417, PC.

5 Presentation of Benefices Act 1605, s 13; Presentation of Benefices Act 1688, s 2; Presentation of Benefices Act 1713, s 1; and see the Benefices Act 1898, s 7. The counties assigned to the respective universities are set out in PARA 782 notes 1, 2 ante. The patronage is not, however, vested in the universities where there are several joint patrons, one of whom can legally exercise it: *Edwards v Bishop of Exeter* (1839) 5 Bing NC 652; see note 2 supra.

6 Roman Catholic Relief Act 1829, s 17.

7 Ibid s 18. See *R v Kennedy* (1902) 86 LT 753. As to the Lord Chancellor, however, see PARA 1389 ante. As to high misdemeanours, see PARA 360 note 2 ante.

8 Roman Catholic Relief Act 1829, s 15.

9 Church Patronage Act 1737, s 5. A Roman Catholic may exercise all the powers conferred on patrons by the Parsonages Measure 1938: see s 19. See also the Roman Catholic Relief Act 1926, s 3.

UPDATE

1394 Church patronage

TEXT AND NOTES 1-6--Provisions cited, except 1898 Act s 7 repealed: Patronage (Benefices) Measure 1986 s 30(3), Sch 5.

TEXT AND NOTE 8--Repealed in so far as it relates to benefices: *ibid* s 30(2), Sch 5.

TEXT AND NOTE 9--1737 Act s 5 and 1938 Measure s 19 repealed: 1986 Measure Sch 5.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1395. Roman Catholics as churchwardens.

1395. Roman Catholics as churchwardens.

Strictly speaking, and subject to certain exceptions¹, a Roman Catholic could be a churchwarden if the Anglican bishop waived the requirement that the person appointed be an actual communicant member of the Church of England², but if the Roman Catholic has conscientious scruples as to acting as such, he might appoint a deputy³. If in holy orders he is exempted from serving⁴.

1 For disqualifications, see PARA 543 ante.

2 See the Churchwardens (Appointment and Resignation) Measure 1964, s 1 (3), and PARA 543 ante.

3 Roman Catholic Relief Act 1791, s 7; and see *Adey v Theobald* (1836) 1 Curt 447 at 454, per Dr Phillimore.

4 Roman Catholic Relief Act 1791, s 8; Criminal Justice Act 1972, s 64 (2), Sch. 6, Part 1.

UPDATE

1395 Roman Catholics as churchwardens

TEXT AND NOTES 3, 4--Repealed: Statute Law (Repeals) Act 1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1396. Exemption of priests from juries and other duties.

1396. Exemption of priests from juries and other duties.

A Roman Catholic in holy orders is exempted from serving in any parochial or ward office, or in any office in any hundred of any shire, city, town, parish, division or wapentake¹. He is also ineligible for jury service². Roman Catholic clergy, though disabled from sitting in the House of Commons³, may, if otherwise qualified, sit in the House of Lords.

They are required to register themselves, with their description as priest or minister, with the clerk of the local authority of any place where they intend to perform any ecclesiastical function⁴, and they are protected from molestation while conducting a religious service in any place of public worship where they are authorised to preach or in a burial ground⁵.

1 Roman Catholic Relief Act 1791, s 8; Criminal Justice Act 1972, s 64 (2), Sch. 6, Part 1.

2 Juries Act 1974, s 1, Sch. 1, Part 1, Group C.

3 Roman Catholic Relief Act 1829, s 9; House of Commons (Clergy Disqualification) Act 1801, s 2. The penalties can only be recovered on information of the Attorney General: Roman Catholic Relief Act 1829, s 38.

4 Roman Catholic Relief Act 1791, s 5; Courts Act 1971, s 56 (1), Sch. 8 para 1 (2). This provision is obsolete.

5 See PARAS 1048, 1049 ante, particularly para 1048 note 5 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1175-1176.

UPDATE

1396 Exemption of priests from juries and other duties

TEXT AND NOTES 1, 4--Repealed: Statute Law (Repeals) Act 1977; Statute Law (Repeals) Act 1978.

TEXT AND NOTE 3--1829 Act s 9 and 1801 Act repealed: House of Commons (Removal of Clergy Disqualification) Act 2001 Sch 2. As to the removal of the disqualification, see further s 1, PARA 680.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1397. Roman Catholic hierarchy.

1397. Roman Catholic hierarchy.

The recognition of the Roman Catholic Church as a religious body does not involve any recognition of the hierarchy¹ under which it is organised, except upon the basis of consent.

Ecclesiastical titles of honour or dignity can only be validly created, or any preeminence or coercive power conferred upon the holder, by the Sovereign², and it is an offence for any person not authorised by law to assume or use the name, style or title of archbishop of any province, bishop of any bishopric or dean of any deanery³, although where the title is not already legally appropriated⁴ on behalf of the Church of England, the law (on the ground of expediency) does not impose penalties upon those ministers of religion who may, as among the members of their own religious body, be designated by titles of distinction connected with some place within the realm⁵. A bishop or other dignitary of the Roman Catholic Church is not a corporation⁶.

1 The Roman Catholic hierarchy was re-established in England in the year 1850. In the following year a statute was passed declaring the assumption of titles connected with places in the realm illegal, and imposing heavy penalties on the persons assuming them: 14 & 15 Vict. c. 60 (Ecclesiastical Titles) (1851). This Act was, however, repealed by the Ecclesiastical Titles Act 1871, s 1.

2 Ibid preamble.

3 Roman Catholic Relief Act 1829, s 24. The penalty which may be imposed is £100, recoverable by information of the Attorney General: s 38.

4 While the enactment referred to in note 3 supra, could be made susceptible of an intention to include all titles whenever subsequently appropriated, the presence in the preamble of the section of the words 'and whereas the right and title of the archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, have been settled and established by law', the more natural interpretation is to confine its effect to those titles already appropriated in the year (1829) when the Act was passed.

5 Ecclesiastical Titles Act 1871, preamble.

6 He differs in this from a dignitary of the Church of England: see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1112, 1128.

UPDATE

1397 Roman Catholic hierarchy

TEXT AND NOTE 3--Repealed: Statute Law (Repeals) Act1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1398. Roman Catholic places of worship.

1398. Roman Catholic places of worship.

The places used by Roman Catholics for religious worship or schools are now under the same laws as those used by protestant nonconformist bodies¹. Places of religious worship may be certified as such², and if certified may be registered for the solemnisation of marriages³.

Registration is not compulsory⁴, but is attended by certain other advantages⁵ among which are exemption from local rates⁶ and from registration under the Charities Act 1960⁷. Disorderly conduct in a Roman Catholic place of worship, as in any other, is an offence⁸.

1 Liberty of Religious Worship Act 1855, s 2, extending the Roman Catholic Charities Act 1832, s 1.

2 Places of Worship Registration Act 1855, s 2. This provision applies to a church building to which a sharing agreement relates under the Sharing of Church Buildings Act 1969: see s 6 (1). The position of Roman Catholic places of worship in regard to registration, with the advantages accruing from it, is the same as that of protestant nonconformist places of worship: Roman Catholic Charities Act 1832, s 1. As to the mode of registration, see PARA 1410 post.

3 Marriage Act 1949, s 41; Marriage Acts Amendment Act 1958, s 1 (1); Registration of Births, Deaths and Marriages (Fees) Order 1972, S.I. 1972 No. 911, art. 3, Schedule; Sharing of Church Buildings Act 1969, s 6, Sch. 1 paras 1, 2. See PARAS 1411, 1412 post.

4 Places of Worship Registration Act 1855, preamble (repealed), s 2: see PARA 1411 post.

5 Roman Catholic places of worship, being placed in the same position as those of protestant nonconformist congregations which are not duly registered, are exposed to the penalties imposed by the Places of Religious Worship Act 1812, s 2; Ecclesiastical Jurisdiction Measure 1963, s 86, Sch. 4: see PARA 1411 post. There are exceptions where a congregation meets in a private dwelling house or a place not usually appropriated to religious worship: see the Liberty of Religious Worship Act 1855, s 1 (2), (3).

6 General Rate Act 1967, s 39; Highways Act 1959, s 184.

7 See the Places of Worship Registration Act 1855, s 9; Charities Act 1960, s 4 (4), (9), 48 (1), Sch. 6.

8 See PARAS 1048, 1049 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1175-1176.

UPDATE

1398 Roman Catholic places of worship

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--1972 Order now replaced by Registration of Births, Deaths and Marriages (Fees) Order 2002, SI 2002/3076 (see PARA 1035).

NOTE 5--1812 Act and 1855 Act repealed: Statute Law (Repeals) Act 1977.

NOTE 6--1959 Act s 184 now Highways Act 1980 s 215.

TEXT AND NOTE 7--Reference to Charities Act 1960 is now to Charities Act 1993: 1855 Act s 9 (amended by the 1993 Act Sch 6 para 1(2)). Section 89 applies to any order under the 1855 Act s 9(b) as it applies to orders under the 1993 Act: 1855 Act s 9(2) (added by the 1993 Act Sch 6 para 1(3)). See also CHARITIES vol 8 (2010) PARA 549.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1399. Roman Catholic property.

1399. Roman Catholic property.

Property held by Roman Catholics in connection with their places of religious worship or schools or for educational and charitable purposes is held upon the same footing as property so held by protestant dissenters¹.

¹ Roman Catholic Charities Act 1832, s 1; see PARA 1416 post. The Act is retrospective: *Bradshaw v Tasker* (1834) 2 My & K 221. For forms dealing with Roman Catholic property, see Forms and Precedents.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(2) ROMAN CATHOLICS/1400. Roman Catholic charities.

1400. Roman Catholic charities.

Roman Catholic charities are subject to the general law of charitable trusts and all such charities which are endowed and are not exempt by statute are within the jurisdiction of the Charity Commissioners for England and Wales¹.

In determining whether trusts are valid charitable trusts as being for the advancement of religion, distinction is not drawn between one sect and another, and accordingly gifts for Roman Catholic charities are good charitable gifts².

1 See the Charities Act 1960, ss 1, 45. As to exempt charities, see ss 4 (4), Sch. 2.

2 See CHARITIES vol 8 (2010) PARA 30. As to the effect of relieving Acts in favour of Roman Catholics, and the question of superstitious uses, see CHARITIES vol 8 (2010) PARAS 63-64. As to the ascertainment of Roman Catholic charitable trusts from usage, see CHARITIES vol 8 (2010) PARA 112.

UPDATE

1400 Roman Catholic charities

NOTES--Charities Act 1960 replaced by Charities Act 1993. As to exempt charities see ss 3, 96, Sch 2; and CHARITIES vol 8 (2010) PARA 315.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(i) In general/1401. Emancipation of protestant nonconformists.

(3) PROTESTANT NONCONFORMISTS

(i) In general

1401. Emancipation of protestant nonconformists.

Historical events which from their cause and circumstances could not afford relief to Roman Catholics, for the very same reason brought relief to the various bodies of protestant nonconformists. Their emancipation began, therefore, at a much earlier date than did that of Roman Catholics, The Toleration Act 1688 relieved all protestant nonconformists who took the oaths and made the declaration prescribed by that Act from prosecution in any ecclesiastical court by reason of their refusing to worship according to the forms of the Church of England¹. So far as such oaths are concerned, the Toleration Act is repealed and replaced by the Promissory Oaths Acts², which apply to all classes of Her Majesty's subjects.

Protestant nonconformist laymen are today under no personal disabilities whatever. They may occupy any post under the Crown³, whether civil or military, and may, if otherwise qualified, sit in either House of Parliament. They may be members of or hold office under any corporation or local authority. They may be patrons of and present to benefices in the Church of England and, if the bishop waives the requirement that the person appointed be an actual communicant member of the Church of England⁴, might be appointed churchwardens.

¹ Toleration Act 1688, ss 1, 2 (repealed). Further relief from the duty imposed on them by the Act of Uniformity 1662 was granted by the Religious Disabilities Act 1846 (both Acts are now mainly repealed).

² Ie the Promissory Oaths Acts 1868 and 1871.

³ The Sovereign herself must, however, be in communion with the Church of England: Act of Settlement (1700), s 3.

⁴ See the Churchwardens (Appointment and Resignation) Measure 1964, s 1 (3), and PARA 543 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(i) In general/1402. Offices in universities and schools.

1402. Offices in universities and schools.

All degrees (other than degrees in divinity¹) and offices in the Universities of Oxford, Cambridge and Durham, or their colleges, except that of Professor of Divinity or such other offices as are open only to persons in holy orders of the Church of England, are open to protestant nonconformists². Whether laymen or ministers, they are not debarred from teaching and, since the Endowed Schools Act 1869, they have been eligible as members of the governing body or as masters of endowed schools³.

1 University statutes have modified this restriction: see EDUCATION.

2 Universities Tests Act 1871, ss 2, 3: see PARA 1392 notes 2, 4 ante.

3 See the Endowed Schools Act 1869, ss 17, 18, 21 (repealed).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(i) In general/1403.
Freedom from tests.

1403. Freedom from tests.

A protestant nonconformist who is a member of the Universities of Oxford, Cambridge or Durham is not to be required to attend any lecture to which he or, if he is not of age, his parents or guardians, object upon religious grounds¹, and similar provision for securing liberty of conscience was made, with certain exceptions, in the case of day and boarding schools under the Endowed Schools Acts² and is made in schools under the Education Act 1944³.

1 Universities Tests Act 1871, s 7 and EDUCATION vol 15(2) (2006 Reissue) PARA 671.

2 See the Endowed Schools Act 1869, ss 15, 16 (repealed). For the exceptions, see ss 8, 14, 19; Endowed Schools Act 1873, s 7 (both repealed). See also PARA 1393 ante, and EDUCATION vol 15(1) (2006 Reissue) PARA 13.

3 See the Education Act 1944, ss 2529, and EDUCATION vol 15(1) (2006 Reissue) PARA 13.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1404. Liabilities and privileges of nonconformist ministers.

(ii) Nonconformist. Ministers

1404. Liabilities and privileges of nonconformist ministers.

Protestant nonconformist ministers¹ enjoy the same civil rights as laymen, although until recently they were permitted to preach and teach in certified places of worship and to enjoy certain exemptions only if they had made a prescribed declaration of protestant faith before a justice of the peace². They are ineligible for jury service³. They are protected from molestation or obstruction while conducting a religious service either in a place of public worship or a burial ground⁴. It is an offence for anyone to teach or preach in a congregation or assembly in any place without the consent of the occupier of the premises⁵, or in any place with the doors locked, bolted, barred or fastened so as to prevent anyone entering⁶, except a private dwelling house or the premises belonging to it⁷, or a place not usually appropriated to purposes of public worship⁸.

1 The mode of address commonly adopted by a nonconformist minister, namely, 'the Reverend...' is legally unimpeachable. 'Reverend' is not a title of honour of dignity appropriate only to those in holy orders of the Church of England, but an epithet, an adjective used as a laudatory or complimentary epithet, a mark of respect and of reverence, as the name imports, but nothing more: *Keet v Smith* (1876) 1 PD 73 at 79, PC.

2 Places of Religious Worship Act 1812, s 5 (under which it was an offence to preach etc. without having made the declaration); Toleration Act 1688, s 8 (repealed) under which the making of the declaration conferred exemption from jury service or appointment as churchwarden or from certain other offices). The declaration was prescribed by the Nonconformist Relief Act 1779, s 1 (repealed). No person could be required to go more than five miles to make the declaration (Places of Religious Worship Act 1812, s 6), and any person could require a justice of the peace to tender the declaration (s. 7; Courts Act 1971, s 56 (4), Sch. 11, Part IV). A justice tendering the declaration had to give a certificate of the making of the declaration (Places of Religious Worship Act 1812, s 8). The making of the declaration had been obsolete long before the repeal of the Nonconformist Relief Act 1779 by the Statute Law (Repeals) Act 1969.

3 Juries Act 1974, s 1, Sch. 1, Part 1, Group C.

4 Offences against the Person Act 1861, s 36. The punishment is imprisonment for a term not exceeding two years: s 36. The same offence is punishable summarily under the Ecclesiastical Courts Jurisdiction Act 1860, s 2: see PARA 1413 post.

5 Places of Religious Worship Act 1812, s 3. This applies only to congregations of more than twenty besides the occupier's family and servants: s 2. It does not extend to Friends (Quakers): s 14. The penalty is discretionary, being not less than £2 nor more than £30: s.3.

6 Ibid s 11: see PARA 1413 post.

7 Liberty of Religious Worship Act 1855, s 1 (2).

8 Ibid s 1 (3).

UPDATE

1404 Liabilities and privileges of nonconformist ministers

NOTE 2--1812 Act repealed: Statute Law (Repeals) Act 1977.

TEXT AND NOTES 5-8--Repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1405. Appointment of nonconformist ministers.

1405. Appointment of nonconformist ministers.

The appointment or election of a protestant nonconformist minister to a particular pastorate and his tenure of it are dependent upon the terms of the trust, if any, by which it is maintained¹. If there is no trust deed, or if the trust deed is silent upon these matters, they are to be decided by the usage of the religious body to which the congregation adheres². There must, where necessary, be an inquiry into what that usage is³, although the court will not necessarily be governed by usage⁴. If upon inquiry there appears to be a divergence between the doctrines professed by the founders of the pastorate and those of the subsisting trustees, the court will decide in favour of the course which will give effect to the founders' intentions⁵.

Where the appointment is vested in trustees an election by the majority of them⁶ or by a majority of the survivors⁷ is valid. Nevertheless a succession of trustees of the same persuasion as the original trustees, the duties of the office do not devolve upon the last survivor's personal representative but, if there is no provision for the creation of fresh trustees, inquiry must be held as to the proper mode of appointing them⁸.

Where the pastorate is supported entirely by voluntary contributions, the right of appointing a minister, where there is no provision to the contrary, is in the congregation⁹. In such a case the minister will be elected by the majority of the congregation¹⁰, and if there is a doubt as to what persons are entitled to participate in the election as members of the congregation reference must be made to the facts of the particular case, including any rules of the religious body concerned¹¹.

The mode of election, where merely customary and not prescribed, may be altered if the alternation is agreed to by all the candidates and approved by a resolution passed at a public meeting of those entitled to vote¹². Where the congregation is entitled to elect, an election of a minister is invalid if due notice of the meeting to elect is not given, or if the electors are not confined to members of the congregation¹³.

1 *A-G v Pearson* (1817) 3 Mer 353; *Perry v Shipway* (1859) 4 De G & J 353.

2 *A-G v Pearson* (1817) 3 Mer 353.

3 *Davis v Jenkins* (1814) 3 Ves & B 151; *A-G v Pearson* (1817) 3 Mer 353.

4 *A-G v Pearson* (1817) 3 Mer 353 at 403.

5 *A-G v Pearson* (1817) 3 Mer 353; *Foley v Wontner* (1820) 2 Jac & W 245; *A-G v Aust* (1865) 13 LT 235; cf. *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515, HL. Formerly a usage of twenty-five years was conclusive evidence of the conformity of the doctrines professed during that period with the founders' intention, except where that intention was expressed in the instrument declaring the trust: Nonconformist Chapels Act 1844 (Lord Lyndhurst's Act), repealed as obsolete by the Charities Act 1960, s 39, Sch. 5. See also PARA 1415 post.

6 *A-G v Lawson* (1866) 36 LJ Ch 130. See also *Perry v Shipway* (1859) 4 De G & J 353; *Cooper v Gordon* (1869) LR 8 Eq 249.

7 *A-G v Lawson* (1866) 36 LJ Ch 130.

8 *Davis v Jenkins* (1814) 3 Ves & B 151.

9 *Porter v Clarke* (1829) 2 Sim 520.

- 10 *Porter v Clarke* (1829) 2 Sim 520; cf. *Cooper v Gordon* (1869) LR 8 Eq 249.
- 11 *Leslie v Birnie* (1826) 2 Russ 114.
- 12 See *Davies v Banks* (1836) 5 LJ Ch 274. Cf. *A-G v Aked* (1835) 7 Sim 321.
- 13 *Perry v Shipway* (1859) 28 LJ Ch 660 at 666; see also *R v Dagger Lane Chapel Trustees* (1804) 2 Smith KB
20.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1406. Qualification of nonconformist minister.

1406. Qualification of nonconformist minister.

The eligibility of a particular candidate for any particular pastorate is determined upon general principles by reference to the terms of the trust under which it was created, and by his acceptance of the formularies of the religious body to which it is attached¹.

Where membership of or communion with a specified religious body is a condition precedent to the holding of the pastor's office, one who by his opinions or actions disavows such membership or communion is absolutely disqualified², and if already in office will be removed³. An injunction to restrain trustees from electing such a person will, if necessary, be granted⁴.

1 *Milligan v Mitchell* (1833) 1 My & K 446.

2 *A-G v Murdoch* (1852) 1 De GM & G 86.

3 *A-G v Murdoch* (1852) 1 De GM & G 86; *A-G v Munro* (1848) 2 De G & Sm 122. Trustees who are parties to an attempt by a minister who is thus disqualified to retain his office may also be removed: *A-G v Murdoch* (1852) 1 De GM & G 86. See also *Broom v Summers* (1840) 11 Sim 353; *Westwood v McKie* (1869) 21 LT 165 (cy-pres).

4 *Milligan v Mitchell* (1833) 1 My & K 446.

UPDATE

1406 Persons under disability

NOTE 1--1959 Act now Mental Health Act 1983: see ss 95, 96, 99(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1407. Validity of election.

1407. Validity of election.

The usual method for determining the validity of an election to an office of a public character is an application for an order of mandamus¹, and where there are not sufficient grounds to justify the making of that order, the court may entertain a suit to establish the right to elect². Pending a decision as to the validity of his appointment a minister will in general be permitted to officiate, and is entitled to be paid his salary while he continues to do so³. If, however, he is not acting properly, he will be restrained from officiating at all⁴.

1 *Davis v Jenkins* (1814) 3 Ves & B 151; cf. *R v Barker* (1762) 1 Wm Bl 300 at 352. As to the remedy by mandamus, see RSC Ord. 53, and **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq. Alternatively an action for a declaration would seem to be appropriate.

2 *Davis v Jenkins* (1814) . Ves & B 151.

3 *Foley v Wontner* (1834) 6 C & P 245. See also *Milligan v Mitchell* (1833) 1 My & K 446; contra *Cooper v Whitehouse* (1834) 6 C & P 545, which was not, however, decided upon the merits, but upon the joinder as defendants in an action for debt of two trustees who had not been parties to the appointment.

4 *Perry v Shipway* (1859) 4 De G & J 353; *Broom v Summers* (1840) 11 Sim 353; *A-G v Welsh* (1844) 4 Hare 572.

UPDATE

1407 Validity of election

TEXT AND NOTE 1--Application for mandamus now by way of application for judicial review: RSC Ord 53; Rules of the Supreme Court (Amendment No 3) 1977, SI 1977/1955. RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1408. Tenure of office and buildings.

1408. Tenure of office and buildings.

In the absence of a special usage or agreement between the parties a nonconformist minister, unlike a beneficed Church of England clergyman, holds his pastorate at the will of the persons who appointed him¹, whether they are the trustees in whom the building in which he officiates is vested², or the congregation who worship there³, or both⁴. On the other hand he may under the provisions of the trust deed⁵ or, in the absence of express provision, according to usage⁶ be appointed for limited periods⁷; or he may hold an appointment for life⁷, which, however, is terminable for misconduct⁸. In the absence of such a provision, and subject to any relevant statutory protection, his tenure of the chapel or minister's dwelling house may be terminated on demand⁹, and he is not entitled to notice or time in which to remove his goods¹⁰. A resolution calling upon a minister to resign, duly passed by the persons entitled to pass it, is equivalent to dismissal¹¹. Where there is an agreement between a minister and a body of trustees for the payment of a salary out of trust funds, however, and the arrangement amounts to a trust for the minister's benefit, the court will inquire into the administration of the trust, and if the minister has been dismissed upon insufficient grounds will declare the dismissal void¹². In the absence of any usage or agreement it is not necessary upon dismissing a minister that any grounds of misconduct should be alleged¹³, but if such allegations are made notice should be given to the minister, and he should be allowed an opportunity of meeting them¹⁴.

1 *A-G v Pearson* (1817) 3 Mer 353; *Porter v Clarke* (1829) 2 Sim 520; *Doe d Jones v Jones* (1859) 10 B & C 718; *Doe d Nicholl v M'Kaeg* (1830) 10 B & C 721; *Perry v Shipway* (1859) 4 De G & J 353; *Copper v Gordon* LR 8 Eq 249.

2 *Doe d Jones v Jones* (1830) 10 B & C 718.

3 *Porter v Clarke* (1829) 2 Sim 50.

4 *Cooper v Gordon* (1869) LR 8 Eq 249.

5 *Perry v Shipway* (1859) 4 De G & J 353; *Dean v Bennett* (1870) 6 Ch App 489.

6 *A-G v Pearson* (1817) 3 Mer 353 at 412, 413, 420; *A-G v Aked* (1835) 7 Sim 321.

7 *A-G v Pearson* (1817) 3 Mer 353 at 413; *Porter v Clarke* 2 Sim 520; *Cooper v Gordon* (1869) LR 8 Eq 249 at 258, 259.

8 Cru Dig (4th Edn) 25, pl 28.

9 *Doe d Jones v Jones* (1830) 10 B & C 718.

10 *Doe d Nicholl v M'Kaeg* (1830) 10 B & C 721. Should he return merely to remove his goods and not attempt to exclude the owners of the premises, he would probably not be regarded as a trespasser: *Doe d Nicholl v M'Kaeg* supra.

11 *A-G v Aked* (1835) 7 sim 321. As to dismissal, see also PARA 1409 post.

12 *Daugars v Rivaz* (1860) 28 Beav 233.

13 *Cooper v Gordon* (1869) LR 8 Eq 249.

14 *Dean v Bennett* (1870) 6 Ch App 489.

UPDATE

1408 Tenure of office and buildings

TEXT AND NOTE 1--A Methodist minister is not an employee of the Church: *President of The Methodist Conference v Parfitt* [1984] QB 368, [1983] 3 All ER 747, CA (but see PARA 1409).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(ii) Nonconformist. Ministers/1409. Dismissal of nonconformist minister.

1409. Dismissal of nonconformist minister.

Where the constitution of the religious body to which the pastorate is attached provides for a procedure for the dismissal of a minister, that procedure must be followed¹. Where a minister has been dismissed and desires to contest the validity of his dismissal, the proper remedy is an action to recover the profits of office². A mandamus to restore him will not be granted except upon clear prima facie evidence of his right³. An injunction will be granted to restrain a minister who has been duly dismissed from officiating⁴ unless the power of removal has been exercised oppressively⁵.

1 *Dr Warren's Case* (1835) Grindrod's Compendium (8th Edn) 371; cf. *Long v Bishop of Cape Town* (1863) 1 Moo PCCNS 411.

2 *R v Jotham* (1790) 3 Term Rep 575; *Daugars v Rivaz* (1860) 28 Beav 233. Alternatively an action for a declaration might be appropriate.

3 *R v Jotham* (1790) 3 Term Rep 575.

4 *A-G v Welsh* (1844) 4 Hare 572; *A-G v Munro* (1848) 2 De G & Sm 122 at 196; *Cooper v Gordon* (1869) LR 8 Eq 249.

5 *Dean v Bennett* (1870) 6 Ch App 489 at 494; see also *Daugars v Rivaz* (1860) 28 Beav 233.

UPDATE

1409 Dismissal of nonconformist minister

TEXT AND NOTES--A Methodist minister is not an employee of the Church, there being no legal relations between the parties: *President of the Methodist Conference v Parfitt* [1984] QB 368, [1983] 3 All ER 747, CA. *Parfitt*, however, was decided on its own particular facts; there is no general presumption that there is no intention to create legal relations between a minister and his church: *Percy v Church of Scotland Board of National Mission* [2005] UKHL 73, [2006] 2 AC 28 (followed in *New Testament Church of God v Stewart* [2007] EWCA Civ 1004, [2008] IRLR 134).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iii) Places of Worship/1410. Registration of places of worship.

(iii) Places of Worship

1410. Registration of places of worship.

Places of meeting used by protestant nonconformists for religious worship may be registered as such¹.

Certificates of registration are to be delivered in duplicate to the superintendent registrar of births, deaths and marriages in the district in which the meeting place is situated, and must be forwarded by him to the Registrar General for England and Wales², by whom a list (which is open to public inspection) of certified places of religious worship must from time to time be made out³, and who must return one copy to the superintendent registrar, to be redelivered by him to the certifying party⁴. A fee of £1 is payable to the superintendent registrar when the certificate is delivered to him⁵. Upon payment of a similar fee to the Registrar General a sealed or stamped certificate of registration may be obtained, which is available in evidence at any proceedings⁶. Notice of the discontinuance of the use of any place for religious worship is to be given⁷, whereupon the registrar must cancel the record of certification and publicly advertise the cancellation⁸.

1 Places of Worship Registration Act 1855, s 2. This section extends to any places of meeting for religious worship of any body or denomination other than the Church of England: cf. para 342 ante. This includes Roman Catholics (see PARA 1398 ante) and Jews (see PARA 1425 post).

Meeting places already certified under the Toleration Act 1688 (repealed) and Places of Religious Worship Act 1812 may be certified and registered under the Places of Worship Registration Act 1855: s 4. Meeting places certified under 15 & 16 Vict. c. 36 (Protestant Dissenters) (1852), which is repealed by the Places of Worship Registration Act 1855, s 1, are not to be certified: under it, as they are already registered by the Registrar General: s 4. The form to be used is set out in Sch. A. As to registration of places of worship belonging to the Methodist Church, see also the Methodist Church Union Act 1929, s 30. See also PARA 342 ante.

2 Places of Worship Registration Act 1855, s 2. When an application for a certificate is made, the Registrar General is bound to inquire whether the place mentioned in the certificate is indeed a place of meeting for religious worship; his functions are not merely ministerial: *R v Registrar General, ex parte Segerdal* [1970] 1 QB 430, [1970] 1 All ER 1; affd. [1970] 2 QB 697, [1970] 3 All ER 886, CA. As to the Registrar General, see PARA 342 note 1 ante.

3 Places of Worship Registration Act 1855, s 7; Registration of Births, Deaths and Marriages (Fees) Order 1968, S.I. 1968 No. 1242 (amended by S.I. 1968 No. 1309, S.I. 1972 No. 911).

4 Places of Worship Registration Act 1855, s 2.

5 Ibid s 5; Registration of Births, Deaths and Marriages (Fees) Order 1968.

6 Places of Worship Registration Act 1855, s 11.

7 Ibid s 6. The notice is to be given by the person who certified or last certified the place for registration, or by one of the trustees of the building or its occupier; it is to be sent, on a form set out in Sch. B, through the superintendent registrar to the Registrar General: s 6.

8 Ibid s 8.

UPDATE

1410 Registration of places of worship

NOTE 1--Methodist Church Union Act 1929 replaced by Methodist Church Act 1976; see PARA 1418.

NOTE 3--1968 Fee Order now replaced by Registration of Births, Deaths and Marriages (Fees) Order 2002, SI 2002/3076 (see PARA 1035). Places of Worship Registration Act 1855 s 7 amended: SI 2008/678.

TEXT AND NOTE 5--Fee now £28: ibid Schedule (substituted by SI 2005/1997).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iii) Places of Worship/1411. Effects and advantages of registration.

1411. Effects and advantages of registration.

Registration is not compulsory¹, but worship by more than twenty persons² in a building without registration, except in the case of a congregation or assembly for religious worship either (1) meeting in a private dwelling house or on the premises belonging to it³; or (2) meeting occasionally in a building or buildings not usually appropriated to purposes of religious worship⁴, renders the occupier of the building, if it is used for such purposes with his consent, liable to penalties⁵.

Registration is attended by certain advantages⁶. A registered building, together with connected land and buildings⁷, is excepted from registration under the Charities Act 1960⁸. It may be registered for the solemnisation of marriages⁹. Every marriage solemnised in a building so registered must be registered immediately after solemnisation either by a registrar of marriages, if present¹⁰, or by an authorised person if the registrar is not present¹¹.

A registered building is not liable to be rated. Under the old law it was necessary for a place to be exclusively appropriated to public religious worship¹², but the modern law lays down no such limitation¹³.

A building certified under the forgoing provisions as a place of meeting for religious worship on behalf of one of the churches which were united to form the United Reformed Church is deemed to be so certified on behalf of a congregation or assembly of persons of the United Reformed Church¹⁴.

1 The preamble (now repealed) to the Places of Worship Registration Act 1855 stated that it was expedient that all places of religious worship other than churches and chapels of the Church of England should, if the congregation so desired, but not otherwise, be certified to the Registrar General, and ss 2 and 4 are merely permissive.

2 Ie excluding the immediate family and servants of the person in whose house or on whose premises the meeting is held: Places of Religious Worship Act 1812, s 2.

3 Liberty of Religious Worship Act 1855, s 1 (2).

4 Ibid s 1 (3).

5 Places of Religious Worship Act 1812, s 2. The penalty is discretionary, being not less than £1 nor more than £20: s 2.

6 The benefits given to places certified under the Toleration Act 1688 (repealed) were, and the benefits given to places under the Places of Religious Worship Act 1812 are, enjoyed: Places of Worship Registration Act 1855, s 3; see *infra*.

7 Ie any forecourt, yard, garden, burial ground, vestry or caretaker's house in respect of situation connected with and held on the same trusts as the registered building (ibid s 9 (a)), and any Sunday school house or other land or building certified by order of the Charity Commissioners to be held upon the same or similar trusts as the registered building and to be in respect of situation so connected with or held or used in connection with that building that it cannot conveniently be separated from it (s. 9 (b)). 'Building' includes part of a building: s 9.

8 Ibid s 9; Charities Act 1960, s 48 (1), Sch. 6. The exception arises under s 4 (4).

9 Marriage Act 1949, s 41; Marriage Acts Amendment Act 1958, s 1 (1); Registration of Births, Deaths and Marriages (Fees) Order 1972, S.I. 1972 No. 911. A church building to which a sharing agreement relates may also be registered under this provision: see PARA 1412 post. As to the proof of registration, see the Marriage and Registration Act 1856, s 24; Registration Service Act 1953, s 23, Sch. 1. Marriages solemnised before 30th July

1855 in a building registered for marriages under the Marriage Act 1836 (repealed) but not otherwise duly certified as required by law are valid: Places of Worship Registration Act 1855, s 13. Since that date the building must be duly registered if the marriage is to be valid, but it will be presumed to have been duly registered until the contrary is proved: *Sichel v Lambert* (1864) 15 CBNS 781; cf. *R v Cresswell* (1876) 1 QBD 446, CCR. A building registered for marriages on behalf of one of the churches which were united to form the United Reformed Church is deemed to be so registered on behalf of a congregation of the United Reformed Church: United Reformed Church Act 1972, s 23 (2). As to marriages of Friends, see PARA 1420 post.

10 Marriage Act 1949, ss 53 (d), 55: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 108.

11 Ibid ss 53 (e), 55. As to the appointment of authorised persons, see s 43; Marriage Acts Amendment Act 1958, s 1 (2); Sharing of Church Buildings Act 1969, s 6, Sch. 1 paras 4, 5; United Reformed Church Act 1972, s 23 (3); Marriage (Authorised Persons) Regulations 1952, S.I. 1952 No. 1869 (amended by S.I. 1965 No. 528, S.I. 1971 No. 1216, S.I. 1974 No. 573), and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 108. As to the registrar's duties, see REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 618.

12 See the Poor Rate Exemption Act 1833, s 1 (repealed).

13 See the General Rate Act 1967, ss 1 (2), (4), 39; Highways Act 1959, s 184. It must, however, be a public place of worship: General Rate Act 1967, s 39 (2) (a). The exemption extends to any church hall, chapel hall or similar building used in connection with any such place of public religious worship, and so used for the purposes of the organisation responsible for the conduct of public religious worship there (s. 39 (2) (b)), and to any hereditament consisting of a place of public religious worship under s 39 (2) (a) together with one or more building under s 39 (2) (b): s 39 (2). See generally RATING AND COUNCIL TAX.

14 United Reformed Church Act 1972, s 23 (1).

UPDATE

1411 Effects and advantages of registration

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 2-5--Repealed: Statute Law (Repeals) Act 1977.

NOTE 6--1812 Act repealed: Statute Law (Repeals) Act 1977.

TEXT AND NOTE 8--Reference to Charities Act 1960 is now to Charities Act 1993: 1855 Act s 9 (amended by the 1993 Act Sch 6 para 1(2)). See now CHARITIES vol 8 (2010) PARA 549.

NOTES 9, 11, 14--The 1972 Act is extended with modifications to Jersey: SI 1998/751.

NOTE 9--1972 Order now replaced by Registration of Births, Deaths and Marriages (Fees) Order 2002, SI 2002/3076 (see PARA 1035). 1856 Act s 24 repealed: Statute Law (Repeals) Act 2004. See also United Reformed Church Act 1981 s 13(2).

NOTE 13--1959 Act s 184 now Highways Act 1980 s 215.

TEXT AND NOTE 14--See also 1981 Act s 13(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iii) Places of Worship/1412. Marriages in shared church buildings.

1412. Marriages in shared church buildings.

A church building¹ to which a sharing agreement² relates may be certified under the Places of Worship Registration Act 1855 as a place of religious worship of any church sharing the building other than the Church of England, and the provisions of the Marriage Act 1949 relating to the registration of buildings³ apply subject to specified modifications⁴ for and in relation to the registration of any such certified church building⁵.

A church building shared by the Church of England under a sharing agreement may be used for the publication of banns and the solemnisation of marriages according to the rites of the Church of England⁶. The rule that a superintendent registrar's licence may not be issued for a marriage in a church or chapel in which marriages may be solemnised according to those rites, or in one belonging to that Church or licensed for the celebration of divine worship according to its rites and ceremonies⁷, applies to a church building to which a sharing agreement relates, in respect of marriages solemnised according to the rites of that Church but not otherwise⁸.

Similar provision is made in the case of chapels of cathedrals⁹, universities, colleges, schools, hospitals and other public or charitable institutions or buildings held on trust for the purposes of public worship (but not a church building to which a sharing agreement relates) which are used for the purposes of public worship in accordance with the forms of service and practice of two or more churches but which are not the subjects of sharing agreements¹⁰.

1 For the meaning of 'church building', see PARA 1186 note 2 ante.

2 As to sharing agreements, see PARA 1186 ante.

3 See the Marriage Act 1949, s 41 para 1411 ante, and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 186 et seq.

4 Thus the building may be registered notwithstanding that it is not a separate building or deemed to be a separate building within the meaning of *ibid* s 41: Sharing of Church Building Act 1969, s 6 (1), Sch. 1 para 1. The application for registration is to be made by a representative of a sharing church other than the Church of England and, if there are two or more such churches, the registration is deemed to have been made on behalf of the congregations of all of them whether or not their representatives applied: Sch. 1 para 2. 'Representative' of a sharing church means, if the building is jointly owned, a trustee representing that church, and, in any other case, a party to the sharing agreement on behalf of that church: Sch. 1 para 9. The registration is not cancelled by the withdrawal of a church other than the Church of England from the sharing if another such church continues to use the building: Sch. 1 para 3.

The authorisation and certification of a person to be present at marriages is effected by a representative of a sharing church other than the Church of England, and different persons may be authorised for different such sharing churches, although each authorised person is authorised in respect of any marriages in the shared building: Sch. 1 para 4. A person can be authorised before the expiration of a year after registration of the building, notwithstanding the Marriage Act 1949, s 43 (1) proviso; Marriage Acts Amendment Act 1958, s 1 (2); Sharing of Church Buildings Act 1969, Sch. 1 para 5. The fact that more than one person is authorised in respect of one building does not necessitate the supply of any additional register books: Sch. 1 para 7.

The consent to the solemnisation required by the Marriage Act 1949, s 44 (1) proviso, may be given by the minister ordinarily responsible for the conduct of worship by the relevant sharing church or, if that church is not the Roman Catholic Church, by a representative of the sharing church, and, if the marriage is not to be solemnised according to the rites of a sharing church, must be given by one of the trustees, owners or managers of the building: Sharing of Church Buildings Act 1969, Sch. 1 para 6. These provisions do not affect any registration or authorisation in force when the sharing agreement takes effect: Sch. 1 para 8.

5 *Ibid* s 6 (1).

6 See *ibid* s 6 (2). This applies notwithstanding that the building is registered under the Marriage Act 1949, Part III (ss. 26-42): Sharing of Church Buildings Act 1969, s 6 (2).

7 In the Marriage Act 1949, s 26 (2) proviso: see PARA 1028 note 3 ante.

8 Sharing of Church Buildings Act 1969, s 6 (3).

9 See *ibid* s 10 (2), (3), and PARA 1186 ante.

10 *Ibid* s 6 (4). However, the provisions of Sch. 1 paras 2-9, do not apply (s. 6 (4) (a)), and s 6 (2) applies in modified form (s. 6 (4) (b)).

UPDATE

1412 Marriages in shared church buildings

TEXT AND NOTE 4--1969 Act Sch 1 para 1 repealed: Marriage (Registration of Buildings) Act 1990 s 1(2)(a). 1969 Act Sch 1 para 2 amended: 1990 Act s 1(2)(b).

NOTE 10--Section 6(4)(a) amended: 1990 Act s 1(2)(a).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iii) Places of Worship/1413. Meetings for religious worship.

1413. Meetings for religious worship.

No meeting, assembly or congregation of persons for religious worship may take place with the doors locked, bolted or barred or fastened so as to prevent the entry of any person¹. Disturbance committed in any nonconformist chapel or certified place of religious worship² or burial ground, whether during a religious service or not, is a summary offence³, and molestation of a minister officiating, either in a place of divine worship or in a burial ground, is an indictable offence punishable with imprisonment for a term not exceeding two years⁴.

1 Places of Religious Worship Act 1812, s 11. The penalty imposed upon the minister conducting service in such conditions is from £2 to £20, and is to be recovered summarily: s 11. The provision does not, however, apply to Friends: see PARA 1419 post. See also PARA 1404 ante. The London Government Act 1963, s 62 (3), provides that without prejudice to the operation in Greater London of the Places of Worship Registration Act 1855, nothing in the 1963 Act transfers to any local authority in Greater London any functions under the Places of Religious Worship Act 1812.

2 See PARA 1410 ante.

3 Ecclesiastical Courts Jurisdiction Act 1860, s 2; Criminal Justice Act 1967, s 92 (1), (9), Sch. 3, Part 1. The offence is punishable summarily by a fine not exceeding £20 or imprisonment for a term not exceeding two months: Ecclesiastical Courts Jurisdiction Act 1860, s 2; Criminal Justice Act 1967, s 92 (1), (9), Sch. 3, Part I.

4 Offences against the Person Act 1861, s 36; Criminal Law Act 1967, s 1. See also the Ecclesiastical Courts Jurisdiction Act 1860, s 2; Criminal Justice Act 1967, s 92 (1), (9), Sch. 3, Part I; para 1048 note 5 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1175-1176.

UPDATE

1413 Meetings for religious worship

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 1--Repealed: Statute Law (Repeals) Act 1977.

NOTE 3--Maximum fine now level 1 on the standard scale: Criminal Justice Act 1982 ss 38, 46. As to the standard scale, see s 37; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iv) Property/1414.
Property of protestant nonconformists.

(iv) Property

1414. Property of protestant nonconformists.

The general principles affecting, on the one hand, the evolution, division and coalition of churches and, on the other hand, the holding of property by a church, have been dealt with already¹. Accordingly it only remains here to apply those principles in conjunction to the property held by the various bodies of protestant nonconformists.

Chapels and meeting houses established specifically for the benefit of one body of protestant nonconformists cannot without a breach of trust be devoted to the use of another body essentially different from the first².

¹ See PARA 332 et seq ante.

² Endowments founded for the benefit of persons believing in the Trinity must not be converted to the use of Unitarians (*Drummond v A-G* (1849) 2 HL Cas 837; *Shore v Wilson* (1842) 9 Cl & Fin 335, HL); nor must endowments founded for the benefit of one body of believers in the Trinity be converted to the use of another body whose system of worship or government is different (*Milligan v Mitchell* (1937) 3 My & Cr 72; *A-G v Welsh* (1844) 4 Hare 572; cf. *Dill v Watson* (1836) 2 Jo Ex Ir 48); and see *A-G v Anderson* (1888) 57 LJ Ch 543. It has been held, however, that a building originally intended for the use of one section of a religious body (in this case Baptists) might be subsequently used indifferently by another section of the same body: *A-G v Gould* (1860) 28 Beav 485; *A-G v Etheridge* (1862) 32 LJ Ch 161. Such a transfer would now, however, be closely scrutinised: see the cases cited in PARA 1415 note 1 post.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iv) Property/1415. Effect of schism.

1415. Effect of schism.

In the event of a schism among the members of one body of protestant nonconformists, the fact that the seceding party constitutes a majority either of the trustees or of the congregations does not of itself entitle the majority to claim possession of the premises¹.

The nature of the original constitution must alone be looked to as the guide in such a case², and the ratio decidendi must be the inclusion in or exclusion from that constitution of an inherent power of alteration³. The claims of those who adhere to that constitution will be enforced unless such an inherent power is proved to exist and to have been exercised by the body authorised in the constitution to exercise it within such limits as may have been prescribed⁴.

The same principle will be followed in the case of a chapel or meeting house not held under a trust attaching it to a specific religious body⁵. Where it subsists for the common benefit of those who in fact attend it either under no trust at all or under a trust of which the wording is indeterminate, however, the court will not intervene to enforce the alleged rights of a minority⁶. Where the religious body in whose interests a chapel or meeting house was founded has ceased to exist, the court will apply the endowment cy-près in favour of another religious body⁷.

1 *Craigdallie v Aikman* (1820) 1 Dow 1, HL; *A-G v Pearson* (1817) 3 Mer 353; *Broom v Summers* (1840) 11 Sim 353; *A-G v Aust* (1865) 13 LT 235; and see *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515, HL.

2 *A-G v Pearson* (1817) 3 Mer 353 at 400, per Lord Eldon LC.

3 *Craigdallie v Aikman* (1820) 1 Dow 1, HL; *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 645, HL, per Lord Davey.

4 *Craigdallie v Aikman* (1820) 1 Dow 1 at 16, HL, per Lord Eldon LC, cited with approval by the Earl of Halsbury LC in *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 at 613, HL; cf. *A-G v Clapham* (1853) 10 Hare 540; revsd. on appeal (1855) 4 De GM & G 591.

5 *A-G v Aust* (1865) 13 LT 235; *A-G v Anderson* (1888) 57 LJ Ch 543.

6 *A-G v Bunce* (1868) LR 6 Eq 563; cf. *Westwood v McKie* (1869) 21 LT 165. Formerly, if the court was required to investigate such a case, the prevailing usages during the preceding twenty-five years would have been accepted as conclusive evidence of the doctrines, worship and government for the promotion of which the place of worship was founded: see the Nonconformist Chapels Act 1844 (Lord Lyndhurst's Act) (repealed); and see *A-G v Bunce* (1868) LR 6 Eq 563. Where usage for a shorter period than twenty-five years only could be proved, that usage, although not conclusive, might be recognised by the court according to its length, and a minority who continued to use the chapel in which an altered usage was proved, suing in their individual capacity, would be precluded by their acquiescence from maintaining an action: *Cairncross v Lorimer* (1860) 3 Macq 827, HL. See *Re Hutchinson's Trusts* [1914] 1 IR 271.

7 *A-G v Bunce* (1868) LR 6 Eq 563; *Westwood v McKie* (1869) 21 LT 165; and see *A-G v Stewart* (1872) LR 14 Eq 17; see generally CHARITIES vol 8 (2010) PARA 208 et seq.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iv) Property/1416. Vesting of property in trustees.

1416. Vesting of property in trustees.

The nineteenth century legislation¹ dealing with the vesting of property in trustees in connection with any congregation, society or body of persons associated for religious purposes, where the property was to be used in some way in furtherance of those purposes, has been repealed², but where on 1st January 1961³ the provisions of that legislation providing for the appointment of trustees applied in relation to any land, those provisions have effect as if contained in the conveyance or other instrument declaring the trusts on which the land is then held⁴.

Where a trustee is appointed or discharged by resolution a signed and attested memorandum is sufficient evidence of that fact and if it is executed as a deed it operates as if it contained a vesting declaration⁵. A deed appointing a new trustee or discharging a retiring trustee⁶ also operates as if it contained a vesting declaration⁷.

¹ I.e. the Trustee Appointment Act 1850, the Trustee Appointment Act 1869, and the Trustees Appointment Act 1890.

² Charities Act 1960, ss 35 (6), 48, Sch. 7, Part I.

³ I.e. the date of commencement of the Charities Act 1960: see s 49 (3).

⁴ Ibid s 35 (6).

⁵ See ibid s 35 (1)-(4).

⁶ I.e. under the Trustee Act 1925, s 39.

⁷ See ibid s 40, and TRUSTS vol 48 (2007 Reissue) PARAS 866-867.

UPDATE

1416 Vesting of property in trustees

NOTE 5--Charities Act 1960 s 35(1)-(4) consolidated: see now Charities Act 1993 s 83; and CHARITIES vol 8 (2010) PARAS 280-281.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iv) Property/1417.
Provision of sites for places of worship.

1417. Provision of sites for places of worship.

The facilities provided by the Places of Worship Sites Acts 1873 and 1882 for the granting by limited owners of land to be used as sites for places of worship and for the residence of the ministers¹, and by the Places of Worship (Enfranchisement) Act 1920² for enlarging the leasehold of such land into a freehold, are not confined to places of worship and burial grounds to be used in connection with the Church of England, but extend for the benefit of any religious denomination.

1 See PARA 1065 ante.

2 See PARA 1066 ante.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(3) PROTESTANT NONCONFORMISTS/(iv) Property/1418. Effect of constitution of society.

1418. Effect of constitution of society.

Save for the due disposal and administration of property there is no authority in the courts to take judicial cognisance of the rules of a voluntary society entered into merely for the regulation of its own affairs¹ unless those rules, as in the case of the Methodist Church² and the United Reformed Church³, have received legislative sanction⁴. The other protestant nonconformist bodies have not hitherto obtained such legislative sanction of their rules⁵. Accordingly they and the Methodist Church, insofar as its constitution remains unaffected by statute, are at liberty to exercise all such powers of self-government and discipline as are not inconsistent with their original constitutions.

1 *Forbes v Eden* (1867) LR 1 Sc & Div 568 at 581, HL, per Lord Cranworth.

2 The Methodist Church Union Act 1929 provides, inter alia, for the union of various Methodist bodies and for future union with other bodies if approved by the church conference, for the vesting of all church property in the Methodist Church and for the community being able to sue and be sued through its officers. For the effect of s 18, which transfers personal property of the Wesleyan Methodist, Primitive Methodist and United Methodist Churches to the Methodist Church, see *Re Talbot, Jubb v Sheard* [1933] Ch 895. See also *Re Methodist Church Union Act 1929, Barker v O'Gorman* [1971] Ch 215, [1970] 3 All ER 314, where the powers of the church conference are discussed in relation to Anglican-Methodist union. The conference, declared in the Act of 1929 to be the final authority within the Methodist Church with regard to all question concerning the interpretation of its doctrines, approved by resolution the inauguration of Stage 1 of the proposals for union, which, in the event, did not receive the requisite majority in the convocations of the Church of England. The plaintiffs contended that the resolution was ultra vires the conference on the ground that it involved an alteration of the church's doctrinal standards, expressly prohibited by the Act of 1929 and the Deed of Union 1932 made under it. It was, however, held inter alia, that the resolution did not in any way alter or vary the doctrinal standards of the Methodist Church and therefore was not ultra vires the conference.

3 The United Reformed Church Act 1972 made provision as to property held on behalf of the Congregational Church of England and Wales and its member churches and of the Presbyterian Church of England in consequence of the formation of the United Reformed Church (Congregational-Presbyterian) in England and Wales. Property held in trust for a uniting church or congregation became held in trust for the corresponding local church (ss.8,9), and gifts to a dissolved church take effect as gifts to the United Reformed Church (s. 16). Provision is made by s 8, Sch. 2, for the adaptation of trusts.

4 See note 2 supra.

5 The rules of such churches are therefore not enforceable except as matters of contract between members who voluntarily subscribe to them. The rules governing the Methodist Church are to be found in their model deed, which contains the trusts upon which their properties are held, and in the minutes of their annual conferences respectively: see *Forms and Precedents*, a conveyance in which the Deed of Union 1932 is recited. The rules governing the Baptist Churches are found in the Baptist Handbook (appearing annually). See also *Forms and Precedents*. The unit in the case of the Baptists or Independents is the congregation rather than the community. Such rules as they have in common must therefore be regarded as accidental rather than incidental to their constitution. For the General Assembly of the Presbyterian Church of Wales, see their Constitutional Deed of 1826, and their Declaration of Trust of 1827; see the Calvinistic Methodist or Presbyterian Church of Wales Act 1933; and *Forms and Precedents*. The constitution of the Salvation Army, which is not a denominational body, is governed by the Salvation Army Act 1931.

UPDATE

1418 Effect of constitution of society

NOTE 2--1929 Act repealed and replaced by Methodist Church Act 1976, which makes further provision concerning the constitution, purposes, doctrinal standards and property of the Methodist Church in Great Britain. It vests in the Trustees for Methodist Church Purposes as custodian trustees all property held on the trusts of the Model Deed of the Methodist Church, and certain other property, and provides for such property to be held on new model trusts. Some of the provisions of the 1929 Act are re-enacted with modifications. The 1976 Act is extended to the Isle of Man by SI 1982/1670, to Jersey by SI 1986/1164, and to Guernsey by SI 1987/1279.

NOTE 3--1972 Act Sch 2 amended by United Reformed Church Act 1981 Sch 1. The 1981 Act makes provision concerning property held on behalf of the Re-formed Association of Churches of Christ in Great Britain and Ireland and its member churches, and for other purposes, in consequence of the unification of the Association with the United Reformed Church in England and Wales. The 1981 Act is extended with modifications to the Isle of Man by SI 1984/361, and to Guernsey by SI 1987/2051. The 1972 Act and the 1981 Act ss 1-2, 21, 24, 28 and 29, are extended with modifications to Jersey: SI 1998/751.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(4) THE SOCIETY OF FRIENDS (QUAKERS)/1419. Status of Friends.

(4) THE SOCIETY OF FRIENDS (QUAKERS)

1419. Status of Friends.

Members of the Society of Friends, or Quakers (as they are frequently, though not correctly, called) remain in a somewhat different position from other nonconformists. The separate treatment accorded to them by the Toleration Act 1688¹ in consequence of their objection to the taking of oaths² led to their exclusion from the operation of other Acts relating to protestant nonconformists, with the result that they alone are not forbidden to hold a meeting, assembly or congregation with the doors locked or barred³.

1 The preamble to the Toleration Act 1688 (repealed) commenced 'Forasmuch as some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties' protestant subjects in interest and affection...'.
 2 Under the Toleration Act 1688 (repealed) dissenters who scrupled the taking of any oath were permitted to make a declaration of fidelity under s 13 in place of the oath otherwise required by s 2. Provision is now made for every person, upon objecting to being sworn, and stating as the ground of his objecting that the taking of an oath is contrary to his religious belief (or that he has no religious belief), to be permitted instead to make a solemn affirmation in all places and for all purposes for which an oath is required by law, and the affirmation is of the same force and effect as an oath: Oaths Act 1888, s 1; Perjury Act 1911, s 17, Schedule. For the form of the affirmation, see the Oaths Act 1888, s 2. A Friend or a Moravian, or a person who has been one, may alternatively make a solemn affirmation or declaration in the special form prescribed by the Quakers and Moravians Act 1833, s 1, or the Quakers and Moravians Act 1838, s 1. Persons permitted to make affirmations may affirm instead of taking the oath of allegiance, judicial oaths etc.: Promissory Oaths Act 1868, s 11. Such persons wilfully and falsely affirming in a judicial proceeding in a matter material to those proceedings commit perjury: Perjury Act 1911, ss 1, 15 (2).

3 Such a meeting etc. is forbidden by the Places of Religious Worship Act 1812, s 11 (see PARA 1413 ante), but that Act does not apply to Friends: s 14. They were thus also relieved from the requirements of ss 5, 6, as to declaration to be made by dissenting preachers, although as they do not have ministers the effect of these obsolete requirements on Friends would have been doubtful.

UPDATE

1419 Status of Friends

NOTE 2--Oaths Act 1888 s 1 now Oaths Act 1978 s 5(1), (4). As to the form of the affirmation see *ibid* s 6.

NOTE 3--1812, 1833 and 1838 Acts repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(4) THE SOCIETY OF FRIENDS (QUAKERS)/1420. Marriages of Friends.

1420. Marriages of Friends.

Friends enjoy special privileges in regard to marriage¹. Their right to contract and solemnise marriages after their own usages has been continuously recognised as valid in law². This right is extended to cases where only one, or neither, of the contracting parties is a member of the Society of Friends or is in profession with or of the persuasion of that Society, provided that due notice is given to the superintendent registrar of the district, and at the same time a certificate is produced to him signed by a registering officer of the Society of Friends in England, stating that the notice is authorised under the rules of the Society³. Where notice has been given and the registrar's certificate issued, the marriage may take place in a building or place not situated in the district in which either of the contracting parties resides⁴.

1 *Haughton v Haughton* (1824) 1 Mol 611.

2 See the Marriage Act 1949, s 47, and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 115. The marriage may be solemnised under the authority of a superintendent registrar's certificate (s. 26 (1) (c)), and may be either with or without a licence (s. 26 (2)); see further PARAS 1023-1029 ante. It may take place at any hour (s. 75 (1) (a)), and must be registered in duplicate by the registering officer of the Society of Friends appointed for the district in which the marriage is solemnised as soon as may be after the solemnisation (ss. 53 (b), 55 (1)).

3 Ibid s 47 (2) (b). As to the registering officer's duties, see Part IV (ss. 53-67), s 76, and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARA 520.

4 Ibid s 35 (4).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(4) THE SOCIETY OF FRIENDS (QUAKERS)/1421. Burial places.

1421. Burial places.

Orders in Council issued for the purpose of discontinuing the use of burial grounds or places of burial do not apply to any burial ground of the people called Quakers unless expressly mentioned in the Order¹.

A gift for the maintenance of a burial ground provided for the Society of Friends is a good charitable gift².

1 Burial Act 1853, s 2: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1137.

2 *Re Manser, A-G v Lucas* [1905] 1 Ch 68.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(5) UNITARIANS/1422. Status of Unitarians.

(5) UNITARIANS

1422. Status of Unitarians.

Unitarians and others who deny the doctrine of the Holy Trinity were for many years subject to disabilities¹. These were relieved, so far as immunity from the penalties incurred by not taking oaths required from other protestant nonconformists is concerned, in 1813, and Unitarians are now treated equally with the adherents of all other denominations. There is now no post under the Crown which is not open to them upon making the oath or affirmation required by the Promissory Oaths Act 1868².

¹ They were relieved from the disabilities and loss of privilege suffered under the Toleration Act 1688 and the Blasphemy Act 1697 (both repealed) by 53 Geo. 3 c. 160 (Doctrine of the Trinity) (1813) (repealed). The oaths prescribed by the Toleration Act 1688 were not objectionable to Unitarians, so that since 1813 they have been on an equality with other nonconformists. The Promissory Oaths Act 1868 substituted certain oaths for those prescribed by the Toleration Act 1688: see PARA 1401 ante.

² I.e. oaths of allegiance, official and judicial oaths: Promissory Oaths Act 1868, ss 2-4. As to affirmations, see the Oaths Act 1888.

UPDATE

1422 Status of Unitarians

NOTE 2--Oaths Act 1888 now Oaths Act 1978.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1423. Status of Jews.

(6) JEWS

1423. Status of Jews.

According to the law of England Jews as such are not looked upon as a separate nationality¹ or a distinct caste, and they have no special status except insofar as they constitute a dissenting religious denomination². Hence they are almost invariably described in Acts of Parliament and legal documents as 'persons professing the Jewish religion'³. Their personal capacity is determined by the law of the country of their domicile even though this may conflict with Jewish law⁴, unless the law of the domicile expressly confers some special privilege or exemption upon them⁵.

1 See Henriques, *The Jews and the English Law* 63-65, 178; *Anon* (1684) 1 Lilly's Practical Register 4; *Wells v Williams* (1697) 1 Ld Raym 282. See generally BRITISH NATIONALITY, IMMIGRATION AND ASYLUM.

2 For the provisions as to Jews in regard to the enactments against Sunday labour, see TIME.

3 *Keren Kayemeth Le Jisroel Ltd v IRC* [1931] 2 KB 465 at 494, CA.

4 The capacity of persons professing the Jewish religion who are domiciled in England to contract marriage is regulated by the law of England: see *Re De Wilton, De Wilton v Montefiore* [1900] 2 Ch 481. Cf. *Levy v Solomon* (1877) 25 WR 842 (Jewish law of legitimation by subsequent marriage not recognised in English courts when doctrine not part of English law). As to recognition of marriages solemnised according to the usages of the Jews, see PARA 1430 post.

5 They were formerly excluded from many civil and political rights by reason of the method of administering the oaths or the forms of the oaths, declarations or tests which were imposed as conditions precedent for the exercise of such rights. It was at one time thought that the Jews, because they were infidels, were *perpetui inimici regis et religionis*, and as such had no better status than that of alien enemies during time of war ie that they were without civil rights of any kind whatsoever, but this doctrine, though laid down by Sir Edward Coke, has long since been discredited (see *Calvin's Case* (1608) 7 Co Rep 1a at 17a, 17b; (1719) 1 Lilly's Practical Register 4; *Wells v Williams* (1697) 1 Ld Raym 282; *Omichund v Barker* (1745) Willes 538; Henriques, *The Jews and the English Law* 185-191), and discrimination against a person on account of his being a Jew is unlawful under the Race Relations Act 1968.

UPDATE

1423 Status of Jews

NOTE 5--Race Relations Act 1968 now replaced by Race Relations Act 1976.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1424. Toleration of Jews.

1424. Toleration of Jews.

The Toleration Act 1688¹ was in 1846 extended to the Jews by an Act which provided that British subjects professing the Jewish religion should be subject to the same laws in respect to their schools, places for religious worship, education and charitable purposes, and the property held with them, as protestant dissenters from the Church of England². Inasmuch as the Acts relating to toleration are liberally interpreted by the courts and even held to be retrospective in their operation³, Jewish religious endowments, trusts and charitable gifts are recognised and executed by the courts⁴. Accordingly, since 1846 the Jewish religion has so far become one of the recognised religions of the country that a condition in a will or trust deed providing for the forfeiture of a beneficiary's interest in a fund if he should forsake the Jewish religion or marry a person who does not profess that religion is valid and will be enforced by the courts⁵.

Persons who disturb the service of the synagogue can be punished in the same way as those who interfere with the worship in a church or chapel⁶.

1 The Toleration Act 1688 is now repealed. See PARA 1401 ante.

2 See the Religious Disabilities Act 1846, s 2, explained by the Liberty of Religious Worship Act 1855, s 2.

3 *Re Michael's Trust* (1860) 28 Beav 39.

4 *De Costa v De Paz* (1754) 2 Swan 487n; *Re Michel's Trust* (1860) 28 Beav 39; *A-G v Mathieson, Re Wilkinson and Fell's Contract* [1907] 2 Ch 383, CA; *Re Cohen, National Provincial and Union Bank of England Ltd v Cohen* (1919) 36 TLR 16; *Re Haendler, A-G v Revel* (1931) Times, 4th July. For gifts relating to Jews held not to be charitable, see *Habershon v Vardon* (1851) 4 De G & Sm 467; *Re Sidney, Hingeston v Sidney* [1908] 1 Ch 488, CA; *Keren Kayemeth Le Jisroel Ltd v IRC* [1932] AC 650, HL.

5 *Hodgson v Halford* (1879) 11 ChD 959; see also *Re Joseph, Pain v Joseph* [1908] 2 Ch 507, CA. See also CHARITIES vol 8 (2010) PARAS 30, 63.

6 Ecclesiastical Courts Jurisdiction Act 1860, s 2; Offences against the Person Act 1861, s 36; Religious Disabilities Act 1846, ss 2, 4; Liberty of Religious Worship Act 1855, s 2. See also PARA 1413 ante.

UPDATE

1424 Toleration of Jews

NOTE 6--1846 Act s 4 repealed: Statute Law (Repeals) Act 1977.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1425. Registration of synagogues.

1425. Registration of synagogues.

A Jewish synagogue¹ may be certified in writing to the Registrar General for England and Wales², who will then register it in due course³. There is no obligation to certify a synagogue, but the certification and subsequent registration of a building as a synagogue has many advantages. A synagogue, if registered, but not otherwise, is excepted, together with connected land and buildings⁴, from registration under the Charities Act 1960⁵, and is not liable to be rated⁶.

1 The Act in fact uses the phrase 'place of meeting for religious worship of persons professing the Jewish religion'.

2 As to the Registrar General, see PARA 342 note 1 ante.

3 Places of Worship Registration Act 1855, s 2. It had previously been held that a synagogue was not an unlawful establishment: *Israel v Simmons* (1818) 2 Stark 356. As to registration of places of worship generally, see PARA 1410 ante.

4 See PARA 1411 note 7 ante.

5 Places of Worship Registration Act 1855, s 9; Charities Act 1960, s 48 (1), Sch. 6. The exception arises under s 4 (4).

6 See the General Rate Act 1967, ss 1 (2), (4), 39. It must, however, be a public place of worship: s 39 (2) (a). The exemption extends to ancillary buildings: see s 39 (2) (b), and PARA 1411 note 13 ante.

UPDATE

1425 Registration of synagogues

TEXT AND NOTES 4, 5--1855 Act s 9 further amended: Charities Act 2006 s 75, Sch 8 para 2.

TEXT AND NOTE 5--For 'Charities Act 1960' read 'Charities Act 1993': 1855 Act s 9, amended by Charities Act 1993 Sch 6 para 1(2). See now CHARITIES vol 8 (2010) PARA 549.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1426. Jewish ministers and secretaries of synagogues.

1426. Jewish ministers and secretaries of synagogues.

With the exception of his ineligibility for jury service¹ the minister of a Jewish synagogue has no special privilege or status by English law, and the tenure of his office is regulated solely by the agreement or contract under which he holds his appointment².

The secretary of a synagogue has statutory powers and duties as to the keeping of marriage register books and the due registration of marriages between persons professing the Jewish religion³, but he is not invested with this authority unless and until he has been certified in writing to be the secretary of a synagogue in England of persons professing the Jewish religion by the president for the time being of the London Committee of Deputies of the British Jews⁴.

1 See the Juries Act 1974, s 1, Sch. 1, Part I, Group C.

2 Cf. para 1405 et seq ante.

3 Marriage Act 1949, Part IV (ss. 53-67). As to Jewish marriages generally, see PARA 1430 post.

4 Ibid s 67. As to the special provisions affecting the West London Synagogue of British Jews, the Liberal Jewish Synagogue, St John's Wood, and synagogues connected with them, see s 67; Marriage (Secretaries of Synagogues) Act 1959, s 1. The London Committee of Deputies of the British Jews is more generally known by the shorter title of the Board of Deputies. It was founded about the time of the accession of George III in 1760, and is the representative body of the Jews in this country, to which every recognised British synagogue is entitled to elect one or more deputies, a general election being held every three years.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1427. Concessions to Jewish faith and practice.

1427. Concessions to Jewish faith and practice.

It is the custom of the courts, quite apart from any statutory enactments, to comply so far as possible with Jewish religious scruples; for instance, a Jew is and always has been allowed to be sworn as a witness upon the Old Testament instead of upon the New Testament¹, and arrangements have been made for cases in which Jews are parties or necessary witnesses not to be taken upon a Saturday or other Jewish holiday², and a Jew has been excused from giving notice of dishonour of a bill of exchange on a Jewish holiday provided it is his custom to keep his place of business closed on such a day³.

Again, a voter who declares that he is a Jew and objects on religious grounds to mark the ballot paper on the Jewish Sabbath may, if the poll be taken on Saturday, have his vote recorded by the presiding officer. It should be observed that this privilege can be exercised by Jews only when the election takes place on a Saturday, and not when it takes place on any other Jewish festival or holiday⁴.

Jewish parents (like other parents) may require their children to be excused attendance at religious worship and religious instruction in schools⁵, and a Jewish teacher (like any other teacher) may not be deprived of promotion or other advantage by the fact that he does not attend such worship or give such instruction⁶.

1 *Robeley v Langston* (1668) 2 Keb 314; Oaths Act 1909, s 2.

2 *Barker v Warren* (1677) 2 Mod Rep 271.

3 *Lindo v Unsworth* (1811) 2 Camp 602. See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1531.

4 Representation of the People Act 1949, Sch. 2, r 39.

5 See the Education Act 1944, s 25 (4), and EDUCATION vol 15(1) (2006 reissue) PARA 13.

6 See *ibid* s 30, and EDUCATION vol 15(1) (2006 Reissue) PARA 389.

UPDATE

1427 Concessions to Jewish faith and practice

NOTE 4--Now Representation of the People Act 1983 Sch 1 r 38(1).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1428. Friendly societies.

1428. Friendly societies.

Friendly societies for providing by members' voluntary subscriptions, with or without the aid of donations, for the purpose of insuring money to be paid with respect to persons of the Jewish persuasion during the period of confined mourning¹, and specially authorised societies (1) for enabling such persons to celebrate the Passover²; or (2) for providing free of charge a lair, coffin, shroud, hearse and tahara to such persons who are members of the society or the husbands, wives, sons under twenty-one years, unmarried daughters of such members, or relations immediately dependent upon such members³, may be registered under the Friendly Societies Act 1974⁴.

1 Friendly Societies Act 1974, s 7 (1) (a), Sch. 1, PARA. (2) (e).

2 Ibid s 7 (1) (f); Treasury Authority dated 18th December 1883.

3 Friendly Societies Act 1974, s 7 (1) (f); Treasury Authority dated 11th December 1967.

4 See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2089-2090.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1429. Other rights and disabilities of Jews.

1429. Other rights and disabilities of Jews.

A Jew may hold an advowson and the right of presentation to a church or ecclesiastical benefice, but he must of course present a duly qualified person¹. If, however, he holds an office in the gift of the Crown to which a right of presentation to any ecclesiastical benefice is attached, the right devolves upon and is to be exercised by the Archbishop of Canterbury for the time being². A Jew may not, under penalty of being guilty of a high misdemeanour and disabled from holding any office under the Crown, directly or indirectly advise the Crown concerning the appointment to or disposal of any office or preferment in the Church of England or in the Church of Scotland².

With these exceptions, Jews are on precisely the same footing in regard to political rights as their Christian fellow-subjects³.

1 *Mirehouse v Rennell* (1833) 7 Bli NS 241 at 322, HL.

2 Jews Relief Act 1858, s 4. As to high misdemeanours, see PARA 360 note 2 ante.

3 See generally Henriques, *The Jews and the English Law* 194, 195, 261-263. There are doubts as to whether a Jew could be appointed Lord Chancellor: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477. The doubt there expressed over such an appointment is unaffected by the Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, which does not apply to persons professing the Jewish faith. A Jew might not be compelled to exercise the office of churchwarden: *Adey v Theobald* (1836) 1 Curt 477.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1430. Jewish marriages.

1430. Jewish marriages.

The English law expressly recognises marriages solemnised according to the usages of the Jews¹. Such usages must be proved in the same way as foreign laws are proved, and, when proved, will be enforced by the courts².

¹ The marriage may be solemnised under the authority of a superintendent registrar's certificate, but such a certificate may only be issued where both parties profess the Jewish religion: Marriage Act 1949, s 26 (1) (d). The marriage may be by licence or without a licence (s. 26 (2)), and may take place at any hour (s. 75 (1)). As to the registration of marriages, see ss 53 (c), 55, and PARA 1034 ante. As to the recognition of Jewish bills of divorcement, see the cases cited in CONFLICT OF LAWS vol 8(3) (Reissue) PARA 255. Cf. *Re Morris and Morris* (1973) 36 DLR (3d) 447 (Man.), where a decree of divorce was obtained in the civil court by the wife, who subsequently sought an order of mandamus directing the husband to commence divorce proceedings according to Jewish law.

² *Lindo v Belisario* (1795) 1 Hag Con 216; *Goldsmid v Bromer* (1798) 1 Hag Con 324; *Horn v Noel* (1807) 1 Camp 61; *Jones v Robinson* (1815) 2 Phillim 285; *R v Althausen* (1893) 17 Cox CC 630; *Nathan v Woolf* (1899) 15 TLR 250; *R v Hammer* [1923] 2 KB 786, CCA. See generally MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1431. Jewish burial grounds.

1431. Jewish burial grounds.

Orders in Council issued for the purpose of discontinuing the use of burial grounds or places of burial do not apply to any burial ground of persons of the Jewish persuasion unless expressly mentioned in the order¹.

¹ Burial Act 1853, s 2: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1137.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(6) JEWS/1432. Slaughter of animals and birds.

1432. Slaughter of animals and birds.

Animals¹ and birds² slaughtered without unnecessary suffering by the Jewish method for the food of Jews by a Jew duly licensed by the Rabbinical Commission constituted for the purpose³ do not come within the provisions of the Slaughterhouses Act 1974⁴ or, as the case may be, the Slaughter of Poultry Act 1967⁵, relating to the methods of slaughter of animals and birds.

1 le horses, cattle, sheep, swine and goats: Slaughterhouses Act 1974, s 36 (4).

2 le turkeys kept in captivity and domestic fowls: Slaughter of Poultry Act 1967, s 1 (1).

3 The Rabbinical Commission for the Licensing of Shochetim consists of the Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth as permanent chairman and nine other members: Slaughterhouses Act 1974, s 36 (3), Sch. 1 paras 1, 2. Of these members one, a vice chairman, is appointed by the Spanish and Portuguese Synagogue (London), three are appointed by the Beth Din appointed by the United Synagogue (London), two are appointed by the Federation of Synagogues (London), one is appointed by the Union of Orthodox Hebrew Congregations (London), and two are appointed by the president of the London Committee of Deputies of British Jews to represent provincial congregations: Sch. 1 para 3. The commission's functions are exercisable notwithstanding a vacancy: Sch. 1 para 4. The commission's quorum is four: Sch. 1 para 5.

4 Ibid s 36 (3) (a).

5 Slaughter of Poultry Act 1967, s 1 (2) (a).

UPDATE

1432 Slaughter of animals and birds

TEXT AND NOTES--1974 Act s 36 and 1967 Act s 1 replaced: Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731 (amended by SI 1999/400 and, in relation to England, by SI 2001/3830, SI 2003/3272, SI 2006/1200, SI 2007/402).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 1--'Animal' now means any sheep, goat or bovine animal: SI 1995/731 Sch 12 para 1.

TEXT AND NOTE 2--'Bird' now means any turkey, domestic fowl, guinea-fowl, duck, goose or quail: ibid Sch 12 para 1.

TEXT AND NOTE 3--See now ibid Sch 12 paras 2, 11-15.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(7) OTHERS/1433. People of other faiths and persons of no faith.

(7) OTHERS

1433. People of other faiths and persons of no faith.

Persons of religious persuasions other than those discussed in the preceding paragraphs, and persons professing no religious belief, are generally in the same position of equality as other people. In the absence of some express provision adherence to the practices of a religious body does not exempt a person from the normal requirements of the law¹. Thus a parent who, for religious reasons, fails to obtain for his child necessary medical assistance is guilty of manslaughter if, as a result of that neglect, the child dies².

The parents of any schoolchild may require the child to be excused attendance at religious worship and religious instruction in school³, and a teacher who does not attend such worship or give such instruction is not thereby to be deprived of promotion or other advantage⁴. In reaching a decision as to the custody of a child the court may consider, in the context of the paramount welfare of the child, the effect on the child of a change in his religious education⁵.

A person who objects to the taking of an oath on the ground that it is contrary to his religious belief or that he has no religious belief⁶ is permitted to affirm⁷ if the judge is satisfied that the person comes within this provision⁸. The fact that a person who has duly taken an oath has no religious belief in no way affects the validity of the oath⁹. Any person may be sworn in any lawful manner¹⁰, and the law permits a person to be sworn in whatever manner is binding on persons of his religious persuasion. Thus a Muslim may be permitted to swear on the Koran. However, where it is not reasonably practical without inconvenience or delay to administer an oath in the manner appropriate to a person's religious belief he may be permitted to affirm instead¹¹.

Where the law provides no facilities for combining civil and religious marriage formalities it is necessary for the parties to contract a civil marriage before a registrar in order for the marriage to be legally valid; this is normally followed by a religious ceremony which has no legal effect. Obedience to parental wishes and submission to the practices of the appropriate religious faith is not duress so as to avoid a marriage celebrated between a girl and the man of her parents' choice whom she had never seen before the ceremony¹².

1 As to the recognition of marriages contracted under other systems of law, see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 208 et seq. As to intercourse between the parties to a marriage recognised by English law as valid where the wife is under age, see *Alhaji Mohamed v Knott* [1969] 1 QB 1, [1968] 2 All ER 563, DC (Muslims).

2 *R v Downes* (1875) 1 QBD 25, CCR; *R v Senior* [1899] 1 QB 283, CCR (Peculiar People).

3 See the Education Act 1944, s 25 (4), and EDUCATION vol 15(1) (2006 Reissue) PARA 13.

4 See *ibid* s 30, and EDUCATION vol 15(1) (2006 Reissue) PARA 389.

5 *Re M (infants)* [1967] 3 All ER 1071, [1967] 1 WLR 1479, CA.

6 A witness who claimed to be agnostic but who admitted that the synoptic gospels were 'mainly true' but who did not accept Christ's divinity has for this purpose no religious belief: *R v Clark* [1962] 1 All ER 428, [1962] 1 WLR 180, CCA.

7 Oaths Act 1888, s 1; Perjury Act 1911, s 17, Schedule: see PARA 1419 note 2 ante.

- 8 *R v Moore* (1892) 61 LJMC 80, CCR; *R v Clark* [1962] 1 All ER 428, [1962] 1 WLR 180, CCA.
- 9 Oaths Act 1888, s 3.
- 10 Oaths Act 1909, s 2 (2) proviso.
- 11 Oaths Act 1961, s 1 (1), (2).
- 12 *Singh v Singh* [1971] P 226, [1971] 2 All ER 828, CA (Sikhs).

UPDATE

1433 People of other faiths and persons of no faith

NOTE 7--Oaths Act 1888 s 1 now Oaths Act 1978 s 5(1), (4).

TEXT AND NOTE 10--Now Oaths Act 1978 s 1.

TEXT AND NOTE 11--Now *ibid* s 5(2), (3).

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(7) OTHERS/1434. Places of worship; ministers.

1434. Places of worship; ministers.

No meeting, assembly or congregation of persons for religious worship may be had in any place with the door locked, bolted or barred or otherwise fastened so as to prevent any persons entering during the time of the meeting, assembly or congregation¹.

Every place of meeting for religious worship² of any body or denomination of persons may be certified in writing to the Registrar General for England and Wales³, who will then register it in due course⁴. Certification is not compulsory, but if certified the meeting place, together with connected land and buildings⁵, is excepted from registration under the Charities Act 1960⁶, and the meeting place is not liable to be rated⁷. It may be registered for the solemnisation of marriages⁸.

Any person who is guilty of riotous, violent or indecent behaviour in any such certified place of religious worship, whether during the celebration of divine service or at any time, or who unlawfully obstructs any minister there, commits an offence⁹.

Any regular minister¹⁰ of any religious denomination is ineligible for jury service¹¹.

1 Places of Religious Worship Act 1812, s 11. The penalty, imposed on the person teaching or preaching there on summary conviction, is a sum of not less than £2 nor more than £20: ss 11, 15. The provision does not, however, apply to any congregation or assembly for religious worship meeting in a private dwelling house or on the premises belonging to it (Liberty of Religious Worship Act 1855, s 1 (2)), or meeting occasionally in any building not usually appropriated to purposes of religious worship (s. 1 (3)).

2 'Place of meeting for religious worship' means a place the principal use of which is for people to come together as a congregation to worship God or do reverence to a deity; whilst it would include a Buddhist temple it does not include a building used largely for instruction in a philosophy of human life, eg scientology: *R v Registrar General, ex parte Segerdal* [1970] 2 QB 697 at 707, [1970] 3 All ER 886 at 889, 890, CA, per Lord Denning MR. 'Worship' indicates humbling oneself in reverence and recognition of the dominant power and control of any entity or being outside one's own body and life (*R v Registrar General, ex parte Segerdal* supra, at 709 and at 891, per Winn LJ); it must have some, at least, of these characteristics, namely submission to the object worshipped, veneration of that object, praise, thanksgiving, prayer or intercession (at 709 and at 892, per Buckley LJ). It is the actions or practices of displaying reverence or veneration to a being regarded as divine by appropriate rites or ceremonies: *Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)* [1964] AC 420 at 431, [1963] 2 All ER 733 at 735, HL, per Lord Evershed.

3 As to the Registrar General, see PARA 342 note 1 ante.

4 Places of Worship Registration Act 1855, s 2; see generally para 1410 ante.

5 See PARA 1411 note 7 ante.

6 Places of Worship Registration Act 1855, s 9; Charities Act 1960, s 48 (1), Sch. 6. The exception arises under s 4 (4).

7 See the General Rate Act 1967, ss 1 (2), (4), 39. It must, however, be a public place of worship (s. 39 (2) (a)) to which the general public is admitted (*Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)* [1964] AC 420, [1963] 2 All ER 733, HL). The exemption extends to ancillary buildings (see the General Rate Act 1967, s 39 (2) (b), and PARA 1411 note 13 ante) eg a Christian Science reading room (*Board of Directors of Ninth Church of Christ Scientist v Westminster City Council and Cane (Valuation Officer)* (1958) 3 RRC 35 (Lands Tribunal)).

8 See the Marriage Act 1949, s 41, and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARAS 186-187.

9 Ecclesiastical Courts Jurisdiction Act 1860, s 2; Offences against the Person Act 1861, s 36: see also PARA 1413 ante.

10 'Regular minister' connotes a class forming only part of a denomination, acknowledged by that denomination as having a superior and distinct standing of its own in spiritual matters: *Walsh v Lord Advocate* [1956] 3 All ER 129, [1956] 1 WLR 1002, HL, construing the same phrase used in the National Service Act 1948, Sch. 1 (repealed) (Jehovah's Witnesses).

11 Juries Act 1974, s 1, Sch. 1, Part I, Group C.

UPDATE

1434 Places of worship; ministers

TEXT AND NOTE 1--Repealed: Statute Law (Repeals) Act 1977.

TEXT AND NOTES 5, 6--1855 Act s 9 amended: Charities Act 2006 s 75, Sch 8 para 2.

TEXT AND NOTE 6--For 'Charities Act 1960' read 'Charities Act 1993': 1855 Act s 9, amended by Charities Act 1993 Sch 6 para 1(2). See now CHARITIES vol 8 (2010) PARA 549.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/9. RELIGIOUS BODIES OTHER THAN THE CHURCH OF ENGLAND/(7) OTHERS/1435. Slaughter of animals and birds by Muslims.

1435. Slaughter of animals and birds by Muslims.

The provisions of the Slaughterhouses Act 1974 and the Slaughter of Poultry Act 1967 relating to methods of slaughter of animals and birds¹ do not apply to the slaughter, without the infliction of unnecessary suffering, of an animal or bird by the Muslim method for the food of Muslims by a Muslim².

1 For the meaning of 'animals' and 'birds', see PARA 1432 notes 1, 2 ante.

2 Slaughterhouses Act 1974, s 36 (3) (b); Slaughter of Poultry Act 1967, s 1 (2) (b).

UPDATE

1435 Slaughter of animals and birds by Muslims

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 1--The reference is now to the provisions of the Welfare of Animals (Slaughter or Killing) Regulations 1995, SI 1995/731 (amended by SI 1999/400 and, in relation to England, by SI 2001/3830, SI 2003/3272, SI 2006/1200, SI 2007/402).

TEXT AND NOTE 2--1974 Act s 36 and 1967 Act s 1 replaced: SI 1995/731 regs 21, 22, Sch 12.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/10. CONSOLIDATION/1435A.
Pastoral Measure 1983.

10. CONSOLIDATION

1435A. Pastoral Measure 1983.

The Pastoral Measure 1968, the Pastoral (Amendment) Measure 1982 and related enactments have been consolidated with minor amendments in the Pastoral Measure 1983. The destination of those consolidated provisions is shown in the following table.

Halsbury's Laws of England/ECCLESIASTICAL LAW (VOLUME 14)/10.
CONSOLIDATION/DESTINATION TABLE

DESTINATION TABLE

This table shows in column (1) the enactments repealed by the Pastoral Measure 1983, and in column (2) the provisions of that Measure corresponding to the repealed provisions.

1 Sections 1-68 of this measure consisted entirely of amendments to the Pastoral Measure 1968 and are therefore shown separately in this Table.

2 Not repealed

(1)	(2)
Pastoral Measure 1968 (No 1)	Pastoral Measure 1983 (No 1)
s 1(1)-(3)	s 1(1)-(3)
s 1(4)	--
s 2(1)	s 2(1)
s 2(1A)	s 2(2)
s 2(2), (3)	s 2(3), (4)
s 3(1)-(8)	s 3(1)-(8)
s 3(9)	s 3(9), (10)
s 3(10)	s 3(11)
s 3A	s 4
s 4(1), (2)	s 5(1), (2)
s 4(2A)	s 5(3)
s 4(3)	s 5(4)
s 5(1)	s 6(1)
s 5(1A)	s 6(2)
s 5(2)-(5)	s 6(3)-(6)
ss 6, 7	ss 7, 8
s 8(1)-(3)	s 9(1)-(3)
s 8(3A)	s 9(4)
s 8(4)-(7)	s 9(6)-(9)
s 8(8)	Rep 1982 No 1, ss 7(3), 71(2), Sch 4
s 9(1)	Rep 1982 No 1, ss 8(1), 71(2), Sch 4
s 9(2), (3)	s 10
s 9(4)	s 9(5)
ss 10-12	ss 11-13
s 13(1), (2)	s 14(1), (2)
s 13(3)-(5)	Rep 1982 No 1, ss 12(3), 71(2), Sch 4
ss 14-18	ss 15-19
s 19(1)-(4)	s 20(1)-(4)
s 19 (4A)	s 20(5)
ss 19(5)-(11)	ss 20(6)-(12)
ss 20, 21	ss 21, 22
s 22(1)	s 23(1)
s 22(1A)	s 23(2)
s 22(2)-(5)	s 23(3)-(6)
ss 23-25	ss 24-26
s 26	Rep 1982 No 1, ss 19, 71(2), Sch 4
s 27(1)	s 27(1)

s 27(1A), (1B)	s 27(2), (3)
s 27(2), (3)	s 27(4), (5)
s 27(4), (5)	Rep 1982 No 1, ss 20(3), 71(2), Sch 4
s 27(6)	s 27(6), (7)
s 27(7)	s 27(8)
ss 28, 29	ss 28, 29
s 30(1)	s 30(1)
s 30(1A), (1B)	s 30(2)-(3)
s 30(2), (3)	s 30(4), (5)
ss 31, 32	ss 31, 32
s 33(1)	Rep 1976 No 4, s 47(4), Sch 8
s 33(2)-(5)	s 33(1)-(4)
s 33(5A)	s 33(5)
s 33(6)-(10)	Rep 1976 No 4, s 47(4), Sch 8
ss 34-36	ss 34-36
s 37	Rep 1982 No 1, ss 27, 71(2), Sch 4
s 38-41	ss 37-40
s 42(1), (2)	s 41(1), (2)
s 42(3)	s 41(3), (4)
s 42(4)-(7)	s 41(5)-(8)
ss 43-45	ss 42-44
ss 46-49	ss 46-49
s 50(1)-(7)	s 50(1)-(7)
s 50(8)	s 50(9)
s 51(1), (2)	s 51(1), (2)
s 51(2A)	s 51(3)
s 51(3), (4)	s 51(4), (5)
s 51(4A)-(4D)	s 51(6)-(9)
s 51(5)-(9)	s 51(10)-(14)
s 52	s 52
s 53(1)	s 53(1)
s 53(2)	s 53(4)
s 53(3)	s 53(3)
s 53(4), (5)	s 53(6), (7)
ss 54-56	ss 54-56
s 57(1), (2)	s 57(1), (2)
s 57(2A)-(2C)	s 57(3)-(5)
s 57(3)	s 57(6)
s 58	s 58
s 59(1)-(5)	s 59(1)-(5)
s 59(5A)	s 59(6)
s 59(6), (7)	s 59(7), (8)
ss 60-62	ss 60-62
s 63(1)	s 63(1)
s 63(1A)	s 63(2)
s 63(2), (3)	s 63(3), (4)
ss 64-66	ss 64-66
s 67(1), (2)	s 67(1), (2)
s 67(2A)	s 67(3)
s 67(3)-(6)	s 67(4)-(7)
s 68(1), (2)	s 68(1), (2)
s 68(2A)	s 68(3)
s 68(3), (4)	s 68(4), (5)
s 69(1)	s 69(1)
s 69(2), (2A)	s 69(2)

s 69(3), (4)
 s 69(5)
 s 69A
 s 70
 ss 71-73
 s 73A
 s 74
 s 75(1)
 s 75(1A)
 s 75(2)
 s 76(1), (2)
 s 76(3)
 s 77(1)
 s 77(2)
 s 77(3)
 s 78(1)-(3)
 s 78(3A)
 s 78(4)
 s 78A
 ss 79-82
 s 83(1)
 s 83(2)
 s 83(3)-(6)
 s 84
 s 85
 ss 86, 87
 s 88(1)-(4)
 s 88(5)
 s 88(6)
 s 88(7)
 s 89
 s 90(1)
 s 90(2)
 s 90(3)
 s 90(4)
 ss 91-93
 ss 94, 95
 s 96(1)
 s 96(2)
 s 96(3)
 Sch 1, PARAS 1-10
 para 10A
 para 11
 Sch 2, PARA 1
 para 1A
 para 2
 para 2A
 paras 3-5
 para 5A
 paras 6-10
 Sch 3, PARA 1(1)
 para 1(1A)
 para 1(2), (3)
 para 1(3A)
 para 1(4)

s 69(3), (4)
 Rep 1982 No 1, ss 52(5), 71(2), Sch 4
 s 70
 Rep 1976 No 4, ss 38(1), 47(4), Sch 8
 ss 71-73
 s 74
 Rep 1974 No 3, s 6(3), (4), Schs 2, 3
 s 75(1)
 s 75(2)
 Rep 1974 No 3, s 6(3), (4), Schs 2, 3
 s 76(1), (2)
 --
 s 77(1)
 --
 s 77(2)
 s 78(1)-(3)
 s 78(4)
 s 78(5)
 s 77(3), (4)
 ss 79-82
 s 83(1)
 Rep 1982 No 1, ss 59, 71(2), Sch 4
 s 83(2)-(5)
 s 84
 Rep 1976 No 3, s 3(9), (10), Schedule, Pt II
 --
 s 85(1)-(4)
 Sch 8, PARA 3
 --
 s 85(5)
 s 86
 s 87(1)
 s 87(3)
 Rep 1973 c 16, s 1(4), Sch 2, Pt III
 s 87(4)
 ss 88-90
 --
 --
 s 94(2)
 --
 Sch 1, PARAS 1-10
 Sch 1, PARA 11
 Sch 1, PARA 12
 Sch 2, PARA 1
 Sch 2, PARA 2
 Sch 2, PARA 3
 Sch 2, PARA 4
 Sch 2, PARAS 5-7
 Sch 2, PARA 8
 Sch 2, PARAS 9-13
 Sch 3, PARA 1(1)
 Sch 3, PARA 1(2)
 Sch 3, PARA 1(3), (4)
 Sch 3, PARA 1(5)
 Sch 3, PARA 1(6)

para 1(4A)	Sch 3, PARA 1(7)
para 1(5)-(9)	Sch 3, PARA 1(8)-(12)
para 1A	Sch 3, PARA 2
paras 2, 3	Sch 3, PARAS 3, 4
para 4(1), (2)	Sch 3, PARA 5(1), (2)
para 4(2A)	Sch 3, PARA 5(3)
para 4(3), (4)	Sch 3, PARA 5(4), (5)
paras 5, 6	Sch 3, PARAS 6, 7
para 7(1)	Sch 3, PARA 8(1)
para 7(2)	Rep 1976 No 4, s 47(4), Sch 8
para 7(3), (4)	Sch 3, PARA 8(2), (3)
para 8	--
para 9	Sch 3, PARA 9
para 10(1)	Sch 3, PARA 10
para 10(2)	Rep 1976 No 4, s 47(4), Sch 8
para 11(1), (2)	Sch 3, PARA 11(1), (2)
para 11(2A)	Sch 3, PARA 11(3)
para 11(3)-(9)	Sch 3, PARA 11(4)-(10)
paras 12, 13	Sch 3, PARAS 12, 13
para 14(1), (2)	Sch 3, PARA 14(1), (2)
para 14(2A)	Sch 3, PARA 14(3)
para 14(3), (4)	Sch 3, PARA 14(4), (5)
paras 15, 16	Sch 3, PARAS 15, 16
Sch 4, PARAS 1, 2	Sch 4, PARAS 1, 2
para 2A	Sch 4, PARA 3
paras 3-11	Sch 4, PARAS 4-12
para 12(1)	Sch 4, PARA 13(1), (3)
para 12(1A)	Sch 4, PARA 13(2)
para 12(2)-(4)	Sch 4, PARA 13(4)-(6)
paras 13-17	Sch 4, PARAS 14-18
Sch 5, PARAS 1-7	Sch 5, PARAS 1-7
para 7A	Sch 5, PARA 8
paras 8-14	Sch 5, PARAS 9-15
Sch 6, PARAS 1-5	Sch 6, PARAS 1-5
para 5A	Sch 6, PARA 6
paras 6-11	Sch 6, PARAS 7-12
Sch 7, PARA 1	Sch 7, PARA 1
para 2	Rep 1976 No 4, s 47(4), Sch 8
paras 3-6	Sch 7, PARAS 2-5
para 7(1)	Rep 1976 No 4, s 47(4), Sch 8
para 7(2)	Sch 7, PARA 6
Sch 8, PARA 1	Sch 8, PARA 1(a)
paras 2-3	Sch 8, PARA 9
paras 4-6	--
paras 7, 8	Sch 8, PARAS 4, 5
paras 10, 11	--
para 12 (1)	--
para 12 (2)	Sch 8, PARA 10
para 13	Sch 8, PARA 12
para 14	Sch 8, PARA 11
para 15	Sch 8, PARA 14
Sch 9	--

Redundant Churches and other Religious Buildings Act 1969 (c 22)	Pastoral Measure 1983 (No 1)
s 3+	s 66
(1)	(2)
Sharing of Church Buildings Measure 1970 (No 2)	Pastoral Measure 1983 (No 1)
s 1(1)	ss 2(1), 17(5)(a)
s 1(2)	s 17(5)(b)
s 3+	s 87(1)
s 4(2)+	s 94(2); and see also s 94(3)
(1)	(2)
Local Government Act 1972 (c 20)	Pastoral Measure 1983 (No 1)
Sch 29, PARA 39	s 87(1)
(1)	(2)
Local Land Charges Act 1975 (c 76)	Pastoral Measure 1983 (No 1)
Sch 1+	s 65(5)
(1)	(2)
Endowments and Glebe Measure 1976 (No 4)	Pastoral Measure 1983 (No 1)
s 38(4)	Sch 7, PARA 3
s 38(5)	--
(1)	(2)
Parochial Registers and Records Measure 1978 (No 2)	Pastoral Measure 1983 (No 1)
s 19(4)	s 27(8)
(1)	(2)
Pastoral (Amendment) Measure 1982 (No 1)	Pastoral Measure 1983 (No 1)
s 1(1), (2)	s 2(1), (2)
s 1(3)	s 2(4)
s 2	ss 3, 4
s 3	s 5(1)-(4)
s 4(1)	s 6(1), (2)
s 4(2), (3)	s 6(3), (4)
s 5	s 7(1), (2)
s 6	s 8
s 7(1)	s 9(1)-(4)
s 7(2)	s 9(6)
s 7(3)	--

s 8(1)	--
s 8(2)	s 10(1)
s 9(1)	--
s 9(2)	s 11(2)
s 10	s 12(1)(b)
s 11	s 13(1), (2)
s 12(1), (2)	s 14
s 12(3)	--
s 13(1)	s 18(2)
s 13(2)	s 18(4)
s 14(1)	s 20(1)
s 14(2), (3)	s 20(4), (5)
s 14(4)-(6)	s 20(10)-(12)
s 15(1)	s 21(5)
s 15(2)	s 21(7)
s 16	s 23(1), (2)
s 17	s 24(1)
s 18	s 25(3)
s 19	--
s 20(1)	s 27(1)-(3)
s 20(2)	s 27(5)
s 20(3)	--
s 20(4)	s 27(7)
s 21	--
s 22	s 29
s 23(1)	s 30(1)-(3)
s 23(2)	s 30(5)
s 24(1)	s 31
s 24(2)	--
s 25(1)	s 33(2)
s 25(2), (3)	s 33(4), (5)
s 26	s 35(1)(c)
s 27	--
s 28(1), (2)	--
s 28(3)	s 37(g)
s 28(4)	--
s 28(5)	s 37(i)
s 28(6), (7)	s 37(l), (m)
s 28(8)	s 37
s 29	s 38(1)
s 30(1)	s 41(3), (4)
s 30(2)	s 41(7)
s 31	s 42(3)
s 32	s 43(1)
s 33(1)	s 44(4)
s 33(2)	s 44(5)(b)
s 33(3)	s 44(7)
s 34	s 46
s 35(1)	s 47(1)
s 35(2)	s 47(1)-(3)
s 36(1)	s 49(1)
s 36(2)	s 49(2)(b), (c), (e)
s 36(3)	s 49(4)
s 37(1)-(3)	s 50(1)-(3)
s 37(4)	s 50(9)

s 38(1)	s 51(1)(b)
s 38(2)	s 51(1)(c), (d)
s 38(3)	s 51(3)
s 38(4)	s 51(5)-(9)
s 38(5)	s 51(10)
s 39(1)	s 54(1)
s 39(2)	s 54(3)
s 40	s 57(3)-(5)
s 41	s 58
s 42(1)	s 59(1)
s 42(2), (3)	s 59(5), (6)
s 43	s 60
s 44	s 61(1)
s 45	s 62
s 46(1)	s 63(1)(a), (b)
s 46(2), (3)	s 63(2), (3)
s 47	s 64(3)
s 48(1)	s 65(1)
s 48(2)-(4)	s 65(2)
s 48(5), (6)	s 65(3), (4)
s 48(7)	s 65(7)
s 49(1)	s 66(1)(a), (b)
s 49(2)	s 66(2)(a), (b)
s 49(3)	s 66(4)
s 50(1)	s 67(1)
s 50(2)	s 67(3)
s 50(3)	s 67(6)
s 51(1)	--
s 51(2), (3)	s 68(3), (4)
s 52(1)	s 69(1)
s 52(2), (3)	s 69(2)
s 52(4)	s 69(3)
s 52(5)	--
s 53(1)	s 70
s 53(2)	s 73
s 54	s 74
s 55	s 75(2)
s 56	s 77(1)
s 57	s 78(2)-(4)
s 58	s 77(3), (4)
s 59	--
s 60(1)	s 87(1)
s 60(2)	s 87(4)
s 61	s 90
s 62	s 94(2)
s 63(1)	Sch 1, PARA 5
s 63(2), (3)	Sch 1, PARAS 10, 11
s 63(4)	Sch 8, PARA 8
s 64(1)	Sch 2, PARAS 1-5
s 64(2)	Sch 2, PARA 6
s 64(3)	Sch 2, PARA 8
s 64(4)-(6)	Sch 2, PARAS 11-13
s 65	See against 1982 No 1, Sch 2, below
s 66(1), (2)	Sch 4, PARAS 3, 4
s 66(3), (4)	Sch 4, PARA 13(1), (2)

s 66(5)	Sch 4, PARA 13(4), (5)
s 66(6)	Sch 4, PARA 13(6)
s 67(1)	Sch 5, PARA 5(d), (e)
s 67(2)	Sch 5, PARA 8
s 67(3)	Sch 5, PARA 12
s 68(1)	Sch 6, PARA 1
s 68(2)	Sch 6, PARA 2(c)
s 68(3), (4)	Sch 6, PARA 3
s 68(5)	Sch 6, PARA 4
s 68(6)	Sch 6, PARA 6
s 68(7)	Sch 6, PARA 12
s 69(1)-(7)	s 45(1)-(7)
s 69(8)	s 45(7), (8)
s 70	s 91
s 71(1)	See against 1982 No 1, Sch 3
s 71(2)	--
s 72(1)	--
s 72(2)	s 94(2)
s 72(3)	--
Sch 1, Pt I	ss 3, 4
Pt II	s 8
Pt III	s 29
Pt IV	s 31
Pt V	s 46
Pt VI	s 90
Sch 2, PARA 1(1), (2)	Sch 3, PARA 1(2), (3)
para 1(3)	Sch 3, PARA 1(5)
para 1(4)	Sch 3, PARA 1(7)
para 1(5), (6)	Sch 3, PARA 1(9), (10)
para 2	Sch 3, PARA 2
para 3	Sch 3, PARA 3(1)
para 4	Sch 3, PARA 4(2)-(6)
para 5(1)	Sch 3, PARA 5(1)
para 5(2)	Sch 3, PARA 5(2), (3)
para 6	Sch 3, PARA 7(5)
para 7(1)	Sch 3, PARA 9(1)
para 7(2)	Sch 3, PARA 9(3)
para 8	Sch 3, PARA 10
para 9	Sch 3, PARA 11(3)
para 10	Sch 3, PARA 12(1)-(3)
para 11	Sch 3, PARA 13
para 12	Sch 3, PARA 14(3)
para 13	Sch 3, PARA 15(2)
para 14	Sch 3, PARA 16(3)
Sch 3, PARA 1	Sch 8, PARA 1(a)
paras 2-7	--
para 8	Sch 8, PARA 7
para 9	Sch 8, PARA 11
Sch 4	--

(1)	(2)
Church of England (Miscellaneous Provisions) Measure 1983 (No 2)	Pastoral Measure 1983 (No 1)

s 11

Sch 4, PARA 15(1)
